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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 220

ATLANTIC COAST LINE RAILROAD COMPANY, JACKSONVILLE TERMINAL COMPANY, and SEABOARD AIR LINE RAILROAD COMPANY,

Petitioners,

—v.—

BROTHERHOOD OF RAILROAD TRAINMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOWELL KENNEDY, T. C. BOLAND, and J. E. EASON,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit appears at R. 39-50, and the dissenting opinion at R. 50-58. They are not yet reported in the Federal Reporter.

The District Court did not enter an opinion in granting the limited preliminary injunction, but its order, containing its findings of fact and conclusions of law, appears at R. 27-31.

JURISDICTION

The judgment of the Court of Appeals was entered on May 24, 1966. (R. 38) The petition for certiorari was filed on June 11, 1966, and was granted on June 20, 1966. (R. 58) The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether, in the circumstances shown by the record in this case, the Norris-LaGuardia Act, either read together with the Railway Labor Act and the Interstate Commerce Act, or considered by itself, deprives the federal courts of jurisdiction to issue a limited injunction restraining unions on strike against one rail carrier from picketing other rail carriers not involved in any labor dispute and thereby disrupting their operations and services?

STATUTES INVOLVED

This case involves the Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C. §§ 151 *et seq.*; the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*; Section 8(b)(4) of the National Labor Relations Act, as added by the Labor Management Relations Act, 61 Stat. 140 (1947), as amended, 29 U.S.C. § 158(b)(4); and Sections 1(4), 1(11), 1(15), 3(4), and 3(5) of the Interstate Commerce Act, 24 Stat. 379 (1887), as amended, 49 U.S.C. §§ 1(4), 1(11), 1(15), 3(4), and 3(5). These provisions are set forth in the Appendix.

STATEMENT

The Jacksonville Terminal.—The Jacksonville Terminal Company ("Terminal Company")[1] is a Florida corporation which operates a passenger and freight rail terminal facility in Jacksonville, Florida.[2] (R. 8-9) Through this terminal property, one of the principal throats of rail commerce in the southeastern United States, flow the routes of the Jacksonville gateway—the rail gateway into peninsular Florida. (R. 11-13) The two carriers whose lines make the main use of the terminal property are Atlantic Coast Line Railroad Company ("Coast Line") and Seaboard Air Line Railroad Company ("Seaboard"). Seaboard and Coast Line each operate throughout the southeastern United States in the six states of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida. (R. 123) The two other railroads using the terminal facilities at the Jacksonville terminal are the Southern Railway System and the Florida East Coast Railway Company ("FEC"). (R. 9) The FEC's line runs down the east coast of Florida from Jacksonville to Miami. Each of these four carriers owns 25 per cent of the stock of the Terminal Company. (R. 81, 83)

The Jacksonville terminal is the rail gateway into Florida. (R. 11-15) Ninety-five per cent of the United States mail carried into or out of Florida—two million

[1] The Terminal Company is a "carrier" under the Interstate Commerce Act, § 1(3), 49 U.S.C. § 1(3).

[2] Certain of the facilities in the area of the Terminal Company are owned by that Company; others are owned by the individual railroads who operate into, out of, and through the terminal area. The Atlantic Coast Line Railroad Company's largest switching yard, system-wide, is located adjacent to the Terminal Company property (R. 152) and all main line moves of the Coast Line originating, terminating or passing through Jacksonville go through it.

sacks each month—is handled through the Jacksonville terminal. (R. 115, 123, 125) In addition, a major portion of the freight carried in and out of peninsular Florida by rail passes through the Jacksonville terminal. (R. 12-13, 63-65) The Coast Line and the Seaboard are, together with the FEC, the three rail carriers serving peninsular Florida. (R. 8-9, 15-17) The FEC serves only the east coast of Florida and not central Florida and the Gulf coast of Florida—such as the Tampa area—whose sole rail service is by the Seaboard and the Coast Line. The freight movements handled through the Jacksonville terminal involve shipments to markets throughout the country of large quantities of perishables, such as the Florida crops of citrus and other fruit and fresh vegetables[3] (R. 63-65, 123); and shipments of many other nonperishable commodities on the movement of which the industrial economy of Florida depends, and on which manufacturing and farming enterprises in other parts of the country rely for raw materials and for mineral fertilizer. (R. 9, 11-13, 16)

It is perhaps somewhat misleading, to the person not familiar with railroading language, to call the Jacksonville terminal property a "terminal" because it is to a great extent not only a place where freight or passenger movements begin or end, but a place *through* which freight or passengers move by rail, either as part of a move on a single carrier or by means of an interchange between carriers. The Coast Line's routes are such that virtually all the freight carried by Coast Line *on its own lines* to and from the Florida peninsula passes through—and must pass through—the terminal property.[4] (R. 11-12, 65, 130, 131)

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[3] The peak 30-day period for citrus shipping was on when the picketing, described below, commenced. (R. 64, 123)

[4] The map at page 9, below, illustrates how the Coast Line's movements on its own line through Jacksonville pass through the

Moreover, Seaboard's line through Jacksonville goes through the terminal property.[5] (R. 15, 183) A substantial amount of all freight carried by Seaboard *on its own lines* to and from the Florida peninsula, and virtually all the freight carried by Seaboard on its own lines to and from the industrial complex of Duval County (in which Jacksonville is located), passes through Jacksonville and hence through the terminal property.[6] (R. 9, 16-17, 136) And it is necessary in all cases for the Seaboard's freight trains to go through the Jacksonville terminal property if cars are to be cut out for interchange or to be added in Jacksonville. (R. 134-35)

Besides these extensive moves of freight which pass through the terminal property on the lines of Coast Line or of Seaboard without interchange, there is also a substantial amount of interchange of freight between lines which is carried on in the terminal property, as one of the principal junction points of the southeast United States. The Coast Line and the Seaboard interchange freight with each other at this point. (R. 64, 65) These

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terminal property. Coast Line's line is denoted in red. The line from Richmond to Tampa enters the terminal property at McQuade Street and exits therefrom at Dennis Street.

[5] The map at page 9 shows the Seaboard Jacksonville line passing through the terminal property in blue. The line, which runs from Savannah, Georgia to Miami via western Florida, enters the terminal property at Acorn Street and exits therefrom at Stockton Street.

[6] Terminal Company employees do not actually handle cars moving in the terminal area, except those moving to the industries located in the terminal area; movements rather are handled by employees of the carrier which brought the cars into the terminal, and these employees also throw those switches which are manually operated. Terminal Company employees operate the automatic switching systems in the terminal area. This allocation of functions prevails both on through movements by a single carrier and on interchange movements. (R. 64-65, 109, 110)

two carriers there interchange freight with the Southern; and, there is also interchange between the other carriers and the FEC. (R. 65)—The FEC's line runs up the east coast of Florida and terminates at the north bank of the St. Johns River in Jacksonville. Its yards are located some twelve miles on the other side of the St. Johns River from the Jacksonville terminal yards. Those of its cars which are destined north of its lines are brought from its yard across the river into the terminal properties and there interchanged with carriers serving points north of Jacksonville.[7] (R. 70, 120-21)

In addition to the freight handled for private shippers, the carriers moving through the Jacksonville terminal carry extensive amounts of freight destined for military bases in Florida, including a large number of movements destined to the missile and space installations at Cape Kennedy.[8] (R. 64, 125)

Coast Line and Seaboard each operates extensive passenger service to and from Florida, connecting the state and its resort areas with the population centers of the North. All these passenger moves, aggregating 42 trains per day, pass through the Jacksonville terminal. (R. 77, 124, 134) The FEC runs only one passenger train each day in each direction to and from Miami, commencing or terminating at the Jacksonville terminal.[9] (R. 78)

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[7] Except in the case of "interchanges" in which the Terminal Company takes cars from the FEC which are destined to the industries adjacent to the terminal area and delivers them to those industries. (R. 110)

[8] To be sure, those rail movements destined for Cape Kennedy must be interchanged with the FEC, which serves the Cape (R. 131), but the Seaboard and the Coast Line must bring this freight into the Jacksonville terminal to interchange it.

[9] As previously indicated, the FEC's yards at the northern extremity of its line are some twelve miles south, and across the

Carriers other than the FEC are the principal users of the Jacksonville terminal property. Less than six-tenths of one per cent of all passenger cars handled annually through the Jacksonville terminal are handled for the FEC, and about 70 per cent of all freight cars handled through the terminal annually are for railroads other than the FEC.[10] (R. 13, 107, 109)

The Florida East Coast Strike.—The Florida East Coast Railway Company—which is not a party to this suit—has

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river from downtown Jacksonville. The only passenger station in Jacksonville is the one on the Terminal Company's property. (R. 122) Accordingly, the single daily passenger service in each direction which FEC operates to and from Miami is brought across the St. Johns River from the FEC's Bowden yards into the terminal property, where the Jacksonville passenger station is located. (R. 93)

Terminal Company employees service the passenger engines and the coaches of FEC while they are in the terminal on this daily move (R. 91) and perform minor repairs for this passenger equipment on this occasion. (R. 40, 91) Similar services are performed by Terminal Company for the passenger trains of the other carriers. (R. 133) Since the FEC passenger moves are a trivial part even of the total passenger service provided into the terminal by all carriers, these activities amount to an infinitesimal portion of the functions of the Jacksonville terminal. The cars so serviced amounted to 642 of the 955,891 cars handled in the Jacksonville terminal in 1965. (R. 13) They were about one-half of one per cent of the cars actually worked on by the Mechanical Department of the Terminal Company. (R. 113) Indeed, however these services may be stressed in respondents' legal theory, it does not appear that elimination of them is the real goal of respondents in this matter. See p. 13, n. 18, *infra*.

[10] In 1965, 231,787 freight cars were handled through the terminal for the account of FEC and 512,185 for the account of other railroads. In February 1966, the figures as to freight cars were 17,956 for FEC and 41,400 for other railroads. As to passenger movements, the figures show an even greater imbalance. In the year 1965, only 642 cars were handled for the FEC and 211,277 for the other railroads. For February 1966, the figures were 96 cars for the FEC and 16,614 for the other railroads. (R. 13)

Moreover, as to the freight actually interchanged within the property in a sample month, only 30 per cent of the interchanges were interchanges to which FEC was a party. (R. 109)

been involved in labor disputes with its employees for years. For over three years, it has been in the grips of a strike by its nonoperating employee unions. The history of the nonoperating unions' dispute, and the situation created by it, is outlined in this Court's Opinion in *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238 (1966). As of April 24, 1966, certain of the FEC's operating unions—the Brotherhood of Railroad Trainmen ("BRT"), the Order of Railway Conductors and Brakemen ("ORC&B"), and the Brotherhood of Locomotive Firemen and Enginemen ("BLF&E")—also went on strike against the FEC. (R. 140-42)

The Picketing of the Terminal.—Without warning, a few hours before dawn on May 4, 1966, the BRT, ORC&B and BLF&E threw a picket line composed of FEC employees or exemployees around the Terminal Company's property.[11] (R. 62) The map facing this page shows the places at which the pickets were stationed. (R. 72-75) In short, the pickets were stationed at every entrance to the terminal, whether for passengers, employees or freight, and also at every public crossing around the perimeter of the terminal where train or switching movements may enter the terminal property from the outside.[12] (R. 10, 16-17, 72-75, 135-136) This picketing included, without exception, crossings where the only trackage was under the sole control and ownership of either Coast Line or Sea-

[11] The actual pickets were BRT members. (R. 144-45) At the hearing in the District Court, a BRT officer admitted that the names of the other two brotherhoods were on the signs carried by the pickets but were covered with a tape. (R. 150-51; see, *e.g.*, R. 167)

[12] Ironically enough, apparently because there is no public crossing at the point where the bridge across the river from the FEC's line enters the Terminal property, the only entrance used by FEC car movements into the Terminal property was not picketed. (R. 70-75, 121, 183)

board." (R. 10, 16-17, 71, 136) This included crossings where the entering cars would not be those involved in interchange with the FEC, but which would be handled solely by the Coast Line or by the Seaboard into, through and beyond the terminal area.[14] (R. 130)

The text of the picket signs carried by the FEC employees is set forth in the margin[15] and appears in various photographs in the record, most clearly at R. 167. The first words of exhortation on the signs were plain and unmistakable: "Do Not Cross."

As soon as the picket line was thrown up, operations within the terminal area began to grind to a halt. (R. 10-

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[13] See the map, p. 9. These crossings were the Coast Line's Dennis Street, and the Seaboard's Stockton Street and Acorn Street crossings.

[14] Cars entering or leaving the Terminal area by the Dennis Street crossing are those which move as parts of train movements along the Coast Line's main line to Sanford and Tampa, Florida. (R. 130) These trains run up and down the central and western Florida Peninsula, parallel to the FEC's line running up the east coast of Florida, and it is most improbable that any cars which would be involved in interchange with the FEC would enter at this crossing. Moreover, inasmuch as the entrance in question is solely one over which main line trains pass, the Coast Line "road crews" who would encounter the pickets at this point would not be those who would be involved in interchange with the FEC; this function would be performed by the Coast Line switching crews after the road crew had brought the train through the Terminal property and into the Coast Line yard. The record on these points could be further developed on a hearing with respect to a permanent injunction.

[15]

"FELLOW RAILROAD MEN
DO NOT CROSS OR ASSIST FEC
B OF RT
ON LEGAL
STRIKE
AGAINST FEC
PLEASE MAKE COMMON CAUSE WITH US
IN MAJOR DISPUTE AGAINST FEC"

11) While those employees who were already on duty in the terminal continued to work out their shift (R. 65, 79), subsequent shifts reporting for work, whether employed by the Terminal Company or the Seaboard or Coast Line, declined to cross the picket line. (R. 10, 17, 62-63, 76, 112, 134-35) Moreover, train movements operated by the Coast Line and the Seaboard whose employees report for work at places other than the Terminal property—including trains coming from as far as Richmond, Virginia[16]—declined to cross the picket line that had been set up at the places where the Seaboard's and Coast Line's tracks entered the terminal from the outside. (R. 62-63, 134)

The net effect was to threaten a complete standstill of all activity within the terminal area; not simply the handling of interchanges with the FEC, but the principal activities of the terminal which do not involve the FEC at all: the movements handled for the account of the Seaboard and the Coast Line, and the through moves by those carriers. It became swiftly apparent that all movement of mail, freight, express and passengers through or within the terminal would come to a halt within a few hours. (R. 11) In addition, the picketing threatened to halt operations of the Terminal Company itself which provides terminal services to Coast Line, Seaboard and other carriers and which also provides direct service to approximately 20 industrial shippers who have located in or adjacent to the terminal area. (R. 9, 10-11, 13-14, 79, 138)

The threatened effect of the picketing upon the mails, in and of itself, was disastrous. Ninety-five per cent of all Florida mail was affected; for each 24 hours during

[16] "Our [Coast Line's] train No. 375, which was en route from Richmond to Jacksonville, had been stopped at McQuade Street because the crews would not cross the picket line." (R. 62-63)

which the Terminal Company's mail department is shut down, six days are required to catch up. (R. 116) The picketing posed a ruinous threat to the movement of Florida's perishable fruits and vegetables. (R. 12, 119) The picketing in this way, and otherwise, threatened to create serious economic loss not only to the Jacksonville community but to the entire economy of Florida. (R. 9, 12-13, 16)

Businesses dependent upon rail services were threatened by the picketing. One case in point was that posed by the Railway Express Agency which adjoins the Terminal Company property and which is dependent upon petitioners' services. Not only is the Agency a substantial employer of labor in the Jacksonville area (R. 117), but its services to other businesses are of great significance. In March 1966 alone, the Agency handled over 2,200,000 in-and-out parcels at Jacksonville, none of which was for the account of the FEC. (R. 117) During the picketing, the Agency had six cars at its platform which it could not get moved into the terminal yard, and it had 16 cars in the terminal yard which it could not get moved to its platform, inasmuch as all rail access to the Agency was through tracks owned by the Terminal Company. (R. 119)

Not only was the technique of the picketing plain—to prevent any crossing of the perimeter of the Terminal property by employees of Seaboard, Coast Line or Terminal Company or by any Seaboard or Coast Line trains —but its purposes were plain and indeed frankly admitted.—Of course, neither Coast Line nor Seaboard nor Terminal Company has any dispute with any of its own employees.[17] (R. 11, 127, 136, 149, 150) Nor were the

[17] Terminal Company has its own employees and separate labor agreements with the pertinent brotherhoods. (R. 96-97, 111)

respondents picketing them because their wages or working conditions were substandard or because respondents desired to unionize them. Respondents have no complaint on any of these scores.—The purpose of the picketing, simply stated, was to make Coast Line, Seaboard and Terminal Company hurt badly enough to be willing to levy an embargo on the FEC. The respondents admitted in testimony in the District Court that if the petitioners stopped interchange operations with the FEC, the picketing would be halted. (R. 146) Indeed, even in this Court the position was plainly and openly taken that if the petitioners imposed an embargo upon the FEC the picketing would cease.[18]

This Action.—The present action was commenced during the course of the day on May 4, 1966 by petitioners against the three operating unions who were responsible for the picketing and against certain of their officers and members. (R. 1-8) The complaint was based on the Interstate Commerce Act and the petitioners' duties thereunder[19] and their corresponding rights to seek removal of

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[18] In their unsuccessful opposition to the grant of a stay in this Court (Memorandum of Respondents in Opposition to Petitioners' Application for an Order Staying Proceedings on the Mandate, etc., pp. 18-21), respondents stated that the petitioners would obtain relief from the problems confronting them through the picketing if they were to proceed to embargo the FEC, *i.e.*, decline to interchange cars with that carrier.

This suggestion puts into perspective the occasional make-weight of the respondents that the terminal is a place of business of the FEC because its single daily passenger train uses the passenger station in the terminal and its passenger engines and coaches are there serviced by Terminal Company employees. These functions would not be affected by an embargo; yet the respondents are evidently willing to call off the picketing without their cessation. See p. 58, *infra*.

[19] See *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, *supra*, 384 U.S., at 244-45.

obstructions to the performance of those federally imposed duties. It recited the facts relevant to the interruption of the commerce of Seaboard, Coast Line and Terminal Company which the picketing had created, stressed the duties of the petitioners to perform services to the public under the Interstate Commerce Act, and to participate in interchange activities under that Act (R. 2-3), and recited the absence of any labor dispute between petitioners and their employees. (R. 5) The complaint prayed for preliminary and permanent injunctive relief against picketing at any entrance or exit used by petitioners' employees in movements on foot or on railway cars in and out of the terminal property. (R. 6-7)

A limited temporary restraining order, enjoining picketing except at the gate to the Terminal Company property designated for use by FEC employees—a gate which had been so designated for the past three years[20]—was entered by the District Court on May 4, 1966 after a contested hearing at which oral testimony was taken. (R. 18-21) The District Court promptly entered an order setting May 9, 1966 as the date for the hearing on the application for a preliminary injunction. (R. 26)

After a further contested hearing at which additional oral testimony was received, the District Court on May 10, 1966, granted a preliminary injunction, limited, as had been the temporary restraining order, to the places designated for employees other than those of the FEC to enter the premises. (R. 27-31)

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[20] At the terminal, one gate—the Bay and Stuart Streets gate—is designated for the use of FEC employees and another for the use of employees of the Terminal Company and the other interstate carriers. (R. 10, 79-80) For the signs at the gates, see the photos at R. 174 and 175.

The District Court found that, unless restrained, the activities of respondents

> "... will cause incalculable damage upon innocent parties other than plaintiffs, in that most of the Atlantic Coast Line passenger service into or out of the State of Florida will be eliminated; most of the passenger traffic of Seaboard Air Line Railroad Company into and out of the City of Jacksonville, Florida, will be eliminated; most of the freight traffic of Atlantic Coast Line Railroad Company into and out of the State of Florida and substantially all of the freight traffic of Seaboard Air Line Railroad Company into and out of Duval County, Florida, will be eliminated—all to the great detriment of the general public; that the transportation and processing of the mails into and out of the State of Florida will be severely obstructed and hampered; that many rail passengers will be prevented from traveling by rail; and that military bases served by plaintiffs will be adversely affected." (R. 29)

The respondents appealed from the order granting the preliminary injunction to the Court of Appeals for the Fifth Circuit. (R. 32) The Court of Appeals entertained the appeal on an expedited basis, hearing argument on May 23, 1966. (R. 35) At the close of argument, the Court of Appeals orally stated that it was reversing the judgment of the District Court, and an order reversing the judgment was, the next day, May 24, 1966, entered by the Court of Appeals by a two-to-one vote, on the theory that the Norris-LaGuardia Act ... deprives the Federal courts of jurisdiction to enter an injunction such as was issued by the trial court...." (R. 38) The Court of Appeals ordered

its mandate to issue forthwith (R. 38), denying a motion to stay its mandate.[21] (R. 36-37)

On application to Mr. Justice Black, referred by him to the whole Court, this Court, by a five-to-three vote on June 6, 1966, reinstated, pending certiorari, the limited preliminary injunction issued by the District Court. 384 U.S. 967. As required in a condition of that order, the petition for certiorari was filed on June 11, 1966. The petition was granted on June 20, 1966. (R. 58)

SUMMARY OF ARGUMENT

I. This case should not be held to be one "involving or growing out of a labor dispute" under the Norris-LaGuardia Act, when that Act is read together with the Railway Labor Act. Where the innocent carriers picketed are not parties to any "dispute" within the meaning of the Railway Labor Act, the case should not be held to be one within the scope of the Norris-LaGuardia Act.

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[21] Inasmuch as this action by the Court of Appeals would have permitted immediate resumption of the picketing at the Terminal Company, with consequent disruption of its operations, the Terminal Company, on May 23, 1966, the day of the Court of Appeals' announcement, commenced a suit for an injunction in the Duval County, Florida, Circuit Court against the respondents. The Complaint in that suit was based exclusively on Florida law. A temporary injunction was granted on May 30, 1966, by the Circuit Court after a contested hearing. Although appellate remedies were available in the Florida courts, respondents instead filed a Suggestion for a Writ of Prohibition from the Florida District Court of Appeal, which was denied without opinion on June 8, 1966. The respondents then filed a petition for certiorari in this Court to review the District Court of Appeal's denial of the Suggestion for Writ of Prohibition, and that petition is pending under the name of *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Company*, No. 244, O.T. 1966. For a statement of the pertinent facts involved, see the Brief in Opposition in that matter, pp. 3-7. A hearing on the question of issuing a permanent injunction took place before the Circuit Court of Duval County, on July 29, 1966, and a limited permanent injunction issued.

1. The Railway Labor Act is a detailed, comprehensive code looking toward the settlement of all "disputes" concerning railway labor, and providing procedures aimed at averting disruptions of vital interstate transportation services. It was recognized from the time of the passage of the Norris-LaGuardia Act in 1932 that the provisions of that Act and the anti-injunction provisions of the Railway Labor Act would have to be accommodated. And thus it is that a long line of decisions of this Court, from *Virginian R. Co.* v. *System Federation,* 300 U.S. 515 (1937), through the present day, hold that injunctive relief may be granted to carry out the processes and the purposes of the Railway Labor Act, notwithstanding the more general provisions of the Norris-LaGuardia Act.

2. The controversy between the petitioners and respondents as to whether petitioners should cease interchanging cars with the FEC and embargo that carrier is not a "dispute" to which the Railway Labor Act's processes relate. There is simply no labor dispute between the petitioner-carriers and the men who are picketing them; there are no procedures in the Railway Labor Act available to petitioners that would give them a chance to compromise the controversy between them and respondents—assuming that there could lawfully be such a compromise consistent with the petitioners' duties under the Interstate Commerce Act.

Under these circumstances, to hold the Norris-LaGuardia Act applicable would be to ascribe to Congress an absurdity: that although the elaborate, time-consuming procedures of the Railway Labor Act must be exhausted before there can be an interruption of regular rail service arising out of a dispute between a carrier and its employees, a similar interruption may occur overnight when there is no such dispute. To say that respondents can disrupt the

performance of petitioners' duties as interstate carriers at will, simply because petitioners are strangers to the dispute between respondents and the FEC, is to thwart the express purposes of the Railway Labor Act, which seeks to avoid "any interruption to commerce or to the operation of any carrier engaged therein" and to provide procedures "for the prompt and orderly settlement of all disputes," without in any way furthering the purposes of the Norris-LaGuardia Act. While, to be sure, the use of economic weapons by one party to a railway labor dispute against the other, once the procedures provided in the Railway Labor Act have been exhausted and self-help is available, may often have adverse consequences to the public, it is another matter to say that economic warfare and self-help may be used against carriers who are not parties to the original dispute, in order to disrupt their commerce. Only recently, this Court, in *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, 384 U.S. 238, 246-48 (1966), indicated that the scope of self-help measures available to a party to a railway labor dispute must be circumscribed to avoid the disruption of relationships not directly involved in the subject matter of the dispute; that decision points the way to decision here.

3. The extraordinary result sought by respondents here —that neither mediation provisions, administrative procedures, nor judicial remedies are available to prevent the disruption of petitioners' commerce—does not follow. It is, rather, necessary to harmonize the concept of "involving or growing out of a labor dispute" as used in the Norris-LaGuardia Act and the concept of a "dispute" under the Railway Labor Act. Such a harmonizing interpretation is supported not only by the long tradition of accommodation of those two statutes by this Court, but by the

wording of the operative provisions of the two statutes, and by the statutory purposes. Where there is no "dispute" with respect to which the parties may invoke the conciliatory procedures of the Railway Labor Act, the case should not be held to be one "involving or growing out of a labor dispute" under the Norris-LaGuardia Act.

The scheme established by Congress to contain the forces of labor strife in the railway industry in the Railway Labor Act would be set at naught if there were any room for the escalation of economic warfare against carriers not involved in the dispute, such as that attempted here. If it is held that there is a gap between the provisions of the Norris-LaGuardia Act and of the Railway Labor Act which would put the picketing involved here beyond the reach of a federal court's processes, the operations of virtually every rail terminal in the United States could be shut down every time one carrier was involved in a strike with its employees. Here, cars originating on, or finally destined to, points on the FEC's lines are interchanged and reinterchanged at various terminal points throughout the United States; under respondents' theory, all these terminals could be picketed and closed down. This Court's decisions on the accommodation of the Norris-LaGuardia Act and the Railway Labor Act indicate that there is no such statutory gap.

II. While the Court need not reach the point, the Norris-LaGuardia Act, even considered without reference to the Railway Labor Act, does not preclude the grant of an injunction here. As the Court of Appeals correctly pointed out, no decision of this Court holds the anti-injunction provisions of the Norris-LaGuardia Act applicable to a situation of the sort presented by the picketing here.

The touchstone of the Norris-LaGuardia Act for these purposes is Section 13(c) and its definition of "labor dispute." A labor dispute includes "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment." While the employer-employee relationship need not exist between the disputants, the fact remains that for there to be a "labor dispute" there must be persons who have a dispute over the matters mentioned.

The Coast Line, the Seaboard, and the Terminal Company have no labor dispute either with their employees or with the respondents. None of their "terms and conditions of employment" are called in question by the respondents. Neither is there any representation dispute. The only controversy petitioners have with the respondents is the fact that the respondents would like them to embargo the FEC. This, however, is neither a controversy "concerning terms or conditions of employment" nor one concerning the "association or representation of persons in negotiating . . . conditions of employment."

Similarly, this case is not, within the meaning of Sections 13(a) and 13(b) of the Norris-LaGuardia Act, one between "persons participating or interested" in a "labor dispute." This is, essentially, because no redress of labor grievances is sought against the Coast Line, the Seaboard, or the Terminal Company.

The statement of purpose and the legislative history of the Norris-LaGuardia Act unite in confirming that this is not the sort of controversy that was meant to be within its ban on the granting of injunctions. Lastly, it would be paradoxical at this late date, nineteen years after Con-

gress has set the face of national labor policy against secondary conduct such as this through passage of the Labor-Management Relations Act, for this Court to hold for the first time that in the areas not covered by that Act federal authority is powerless to prevent interruptions of commerce of this kind. While a decision harmonizing the Railway Labor Act and the Norris-LaGuardia Act, as we urge in point I, would obviate the need for a holding on this point, we submit that in any event the Norris-LaGuardia Act should not be held at this late date to make the federal courts powerless to act against secondary conduct of the sort involved here.

III. The complaint in this matter stated a claim arising under federal law and the proofs justified the grant of the limited preliminary injunction.

1. The complaint stated a claim under the Interstate Commerce Act and the Railway Labor Act, and hence the jurisdiction of the District Court was properly invoked. The Interstate Commerce Act imposes an extensive set of duties upon petitioners to furnish transportation service. It has been repeatedly held that there is jurisdiction in the federal courts over suits to remove obstructions to the performance of that duty. Likewise, it has been repeatedly held that there is jurisdiction in the federal courts to consider claims of violations of the purposes and policies of the Railway Labor Act. The complaint was also grounded on this basis.

2. The picketing here was unlawful as a matter of federal law on three separate bases, any one of which would be by itself an adequate justification of the limited preliminary injunction.

A. The picketing, as we have demonstrated in part I, above, violated the purposes and policies of the Railway Labor Act and was properly enjoinable on that ground.

B. Moreover, the actions of the respondents, which caused detriment to the public and interference with the petitioners' public duties, were without legal justification in that they violated the national labor policy as set forth in the Labor-Management Relations Act. Although that Act does not in terms apply here, the courts cannot ignore its clear expression of national public policy in labor matters in judging the legality of secondary conduct of the sort involved here. The picketing here was the sort of conduct which clearly violates the terms of Section 8(b)(4) of the Act and the cases construing it. The injunction carefully preserved the right to picket at the gate at the terminal used by the FEC primary employees. The picketing at the other gates represents the clearest sort of proscribed secondary activity.

C. Finally, the picketing here in question is unlawful because it seeks to have petitioners commit acts in violation of their statutory duties under the Interstate Commerce Act. That Act imposes a duty upon the petitioners to continue interchange operations with the FEC. That duty is enforceable by mandatory injunction, and in fact the FEC has obtained such an injunction against petitioners here. The suggestion of respondents that petitioners are legally free to levy an embargo against the FEC is without substance. No case supports the proposition that the existence of a strike on a connecting carrier is a valid reason for the declaration of an embargo. The strike has not caused any physical, operating condition of the sort which the authorities indicate will justify the levying of an embargo; it is not the strike, but the sec-

ondary picketing by respondents in their effort to cause the embargo which created the disruption in the terminal area. It would be paradoxical to say that picketing is lawful when it seeks to induce the imposition of an embargo when the only thing which is alleged to justify the imposition of that embargo is the picketing itself. Moreover, acceptance of the proposition that an embargo may lawfully be levied against a struck carrier, upon picketing by that carrier's employees of its connecting lines, would be to assume that the statutory policy of the United States is in favor of the escalation of railway labor disputes, not their containment. Its acceptance would mean that a strike on one carrier would automatically escalate into an incident of regional or national proportions. The policies both of the Interstate Commerce Act and of the Railway Labor Act require a contrary conclusion.

ARGUMENT

I. THE PROPER ACCOMMODATION OF THE NORRIS-LAGUARDIA ACT AND THE RAILWAY LABOR ACT INDICATES THAT THIS CASE SHOULD NOT BE HELD TO BE ONE "INVOLVING OR GROWING OUT OF A LABOR DISPUTE" IN WHICH AN INJUNCTION WOULD BE BARRED BY THE NORRIS-LAGUARDIA ACT

The picketing in this case is believed to be unique[1] in recent railway-labor-relations history—picketing, by employees of a struck carrier, against a group of innocent

[1] As cited at pp. 38-39, *infra*, there have been certain cases which approach the situation presented by this case, generally involving picketing of terminal or transfer facilities. In all of them an injunction was granted; this case is a stronger one. None of these cases seems to have involved the potential disruption of through rail commerce involved in this case; none goes so far as to involve a rail union seeking to have one rail carrier embargo another.

carriers whose labor relations have been peaceful and who have no labor dispute with their own employees, in an effort to induce those carriers to impose an embargo upon the struck carrier. The novelty of this action, and its potentially disruptive effects in the rail transportation industry, counsel the need to make a careful accommodation of the policies of the Railway Labor Act and the Norris-LaGuardia Act. We urge that in that accommodation the facile holding[1] of the Court of Appeals that the Norris-LaGuardia Act applied should be rejected, and that under the circumstances presented it should be held that, where there is no "dispute" to which the innocent carriers are a party cognizable under the Railway Labor Act, the case, as far as they are concerned, should not be held to be one "involving or growing out of a labor dispute" for the purposes of the Norris-LaGuardia Act.

1. *The statutory framework and the principle of accommodation.*—There are two basic substantive statutes governing labor relations in interstate commerce. One is the Labor Management Relations Act ("LMRA"), which applies to industry generally, including manufacturing and service concerns. The other is the Railway Labor Act, which applies to the essential transportation industries—the railroads and the airlines. The Railway Labor Act is the more limiting of the two—in response to the needs of the subject matter, it puts closer constraints on the behavior of unions and managements. Relationships in the manufacturing and service industries under the LMRA are essentially governed through contract; relationships

[1] The entire discussion of the Court of Appeals of the necessity to accommodate the Railway Labor Act and the Norris-LaGuardia Act was as follows: "We deem the argument based upon the Railway Labor Act to be without substance." (R. 49-50)

under the Railway Labor Act are more in the nature of status or "community," as this Court has put it;[3] terms and conditions of employment are fixed in a variety of ways besides contract, by practice, custom, or the like; they may be changed only by following the prescribed procedures of the Act; collective bargaining contracts generally have no termination dates; a compulsory arbitration procedure is provided for so-called "minor disputes" or grievances, whether or not the parties have ever agreed to binding arbitration;[4] major disputes over prospective terms and conditions of employment are subject to lengthy mediation efforts by a standing agency of the government;[5] self-help is permitted the parties not as soon as a collective bargaining contract expires, but only upon the unsuccessful termination of negotiations and exhaustion of statutory procedures arising out of notices under Section 6 of the Act.[6] These procedures reflect the clear purpose of Congress "to avoid any interruption to commerce or to the operation of any carrier engaged therein" (§ 2, 45 U.S.C. § 151a), and, to that end, to provide in detail for the regulation of the labor-management relationship in an area which was recognized from an early date as one presenting particular perils to the national economy in the case of work stoppages. *Cf. Pennsylvania R. Co.* v. *Railroad Labor Board*, 261 U.S. 72, 79 (1923).

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[3] *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co.*, *supra*, 384 U.S., at 246. Indeed, many important details of the relationship are spelled out in the statute itself.

[4] Section 3, 45 U.S.C. § 153; *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711 (1945).

[5] Section 5, 45 U.S.C. § 155.

[6] 45 U.S.C. § 156. See *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio R. Co.*, 372 U.S. 284, 289-90 (1963).

The Norris-LaGuardia Act was passed in 1932 against a backdrop of the federal courts, in the absence of any federal statutory labor policy with respect to industries other than the transportation industry, imposing their own notions of labor policy and granting injunctions to break strikes in labor disputes. Gregory, *Labor and the Law* (2d ed. 1961), pp. 184-99. This had been done in diversity suits under the regime of *Swift* v. *Tyson*, 16 Pet. 1 (1842),[7] and in suits applying the Sherman Act to labor unions;[8] despite the Clayton Act's apparent ban on such injunctions (Section 20, 38 Stat. 738, 29 U.S.C. § 52)

At the time of the passage of the Norris-LaGuardia Act, it was recognized that, at the very least, there would have to be an accommodation between the provisions of that Act and the Railway Labor Act, which, as originally passed in 1926, was the first general substantive federal statute providing a code for labor relations, and which stood as the only such substantive statute in 1932.—Thus, Congressman Lankford of Virginia asked, during the floor debates: "Does this make it possible for lack of an injunction to tie up railroads and prevent them from transporting milk, for instance?"

To which Congressman LaGuardia replied: "[T]he railroad labor act . . . takes care of the whole labor situation pertaining to the railroads. They could not possibly come under this for the reason that we provided the machinery there for settling labor disputes."

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[7] *See, e.g., American Steel Foundries* v. *Tri-City Council*, 257 U.S. 184 (1921); *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U.S. 229 (1917).

[8] *See, e.g., Loewe* v. *Lawlor*, 208 U.S. 274 (1908); *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418 (1911); *cf. United States* v. *Hutcheson*, 312 U.S. 219 (1941).

After which the following dialogue occurred: Mr. Lankford: "It [the bill at hand] does not apply to the transportation of . . . necessities that go in interstate commerce?"

Mr. LaGuardia: "Interstate traffic is entirely covered in the railroad labor act of 1926." (75 Cong. Rec. 5499 (1932))

This indicated and necessary accommodation of the two statutes—subordinating where necessary the unqualified general propositions of the Norris-LaGuardia Act to the more specific provisions of the Railway Labor Act[9]—has been performed by this Court ever since. Thus it is that this Court has stated: "We hold that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute to the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable." *Brotherhood of Railroad Trainmen* v. *Chicago River & I. R. Co.*, 353 U.S. 30, 40 (1957).[10] And accordingly this Court and the lower courts have repeatedly held that injunctive relief may be granted to carry out the policies and purposes of the Railway Labor Act, notwithstanding the Norris-LaGuardia Act.

It is held that, even in the presence of a dispute, as defined in the Railway Labor Act, and a "labor dispute" as

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[9] *Virginian R. Co.* v. *System Federation*, 300 U.S. 515, 563 (1937).

[10] There are no express repealers of the provisions of the Norris-LaGuardia Act in the Railway Labor Act, despite that Act's revision in 1934 after the passage of the Norris-LaGuardia Act. The legislative history of the 1934 Act does not appear to evidence any express intention as to how the two statutes should be accommodated, although obviously they must. The process of accommodation has accordingly been left to—and as the cases cited demonstrate, repeatedly performed by—this Court.

defined in the Norris-LaGuardia Act, an injunction may issue to carry out the purposes of the Railway Labor Act. *Brotherhood of Railroad Trainmen* v. *Chicago River & I. R. Co., supra; Brotherhood of Locomotive Engineers* v. *Louisville & N. R. Co.*, 373 U.S. 33 (1963); *Virginian R. Co.* v. *System Federation*, 300 U.S. 515, 562-63 (1937); *Southern R. Co.* v. *Brotherhood of Locomotive Firemen*, 337 F.2d 127, 131-33 (D.C. Cir. 1964); *Railroad Yardmasters* v. *Pennsylvania R. Co.*, 224 F.2d 226, 228 (3d Cir. 1955); *American Airlines, Inc.* v. *Air Line Pilots Ass'n*, 169 F. Supp. 777, 787-88 (S.D.N.Y. 1958); see *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 725 (1945); *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio R. Co.*, 372 U.S. 284, 290 (1963); *Graham* v. *Brotherhood of Locomotive Firemen*, 338 U.S. 232, 237-40 (1949); *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768 (1952).[11] Indeed, the very first case construing the interrelationship between the Railway Labor Act and the Norris-LaGuardia Act, *Virginian R. Co.* v. *System Federation, supra*, stated, with respect to a mandatory injunction ordering collective bargaining with the certified representative of the carriers' employees: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provi-

[11] A quite different approach is applied by this Court with respect to the accommodation of the LMRA and the Norris-LaGuardia Act. Unlike the Railway Labor Act, the LMRA contains certain express provisions effecting partial *pro tanto* repeals of the Norris-LaGuardia Act. This Court, in the light of these specific repealers, and of a legislative history found to suggest a conscious design not to go further in superseding the Norris-LaGuardia Act, has followed the approach of a strict construction of the repealers of the Norris-LaGuardia Act in the LMRA, and has declined to extend them by implication. *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 204-05, 205-10 (1962). As the Court observed in *Sinclair Refining*, in discussing the *Chicago River* case, "[I]n *Chicago River* we were dealing with a statute [the Railway Labor Act] that had a far different legislative history than the one now before us." *Id.*, at 211.

sions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted."[12] 300 U.S., at 563. And the necessity to accommodate the two statutes has been felt even in those cases where injunctions have been held barred by the Norris-LaGuardia Act.[13]

The purposes of the Railway Labor Act are all-important to this matter. After the passage of the Norris-LaGuardia Act, the Railway Labor Act was extensively revised in 1934 to make more pervasive its procedures for the voluntary—and indeed in some cases the compulsory—compromise of disputes which might lead to an interruption of rail commerce. See 48 Stat. 1185 (1934).[14] The Act, as amended, is expressly designed to accomplish the following objectives:

> "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein;
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[12] Of course, Section 2 *Ninth* does not expressly authorize any remedy at all for a carrier's failure to treat with the certified bargaining representative, nor does it contain any provision expressly purporting to make any repeal of the Norris-LaGuardia Act.

[13] Thus, even in the case which represents the high-water mark of Norris-LaGuardia Act abstention in a railway labor dispute, this Court's five-to-four decision in *Order of Railroad Telegraphers* v. *Chicago & N.W.R.Co.*, 362 U.S. 330 (1960), this Court reversed the Court of Appeals' issuance of an injunction only after finding that the union's strike had followed a request made by the union under § 6 of the Railway Labor Act, for bargaining on certain matters, held by the Court to be lawful bargaining subjects under that Act, and after holding that the railroad had declined to bargain as to those matters. Thus, the denial of the injunction against the strike was completely in accord with the purposes of the Railway Labor Act. 362 U.S., at 339.

[14] See *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 725-28 (1945).

"(4) To provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions;

"(5) To provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Section 2, as amended, 45 U.S.C. § 151a.

To achieve these purposes, the amended Act creates an array of boards, and it provides a comprehensive code of procedures for settlement of disputes by conference, negotiation, mediation, arbitration, and conciliation. "[T]he procedures of the Act are purposefully long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute." *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra,* 384 U.S., at 246. Or, as this Court said in the *Chicago River* case, "Congress acted [in passing the Norris-LaGuardia Act] to prevent the injunctions of the federal courts from upsetting the natural interplay of the competing economic forces of labor and capital. Rep. LaGuardia, during the floor debates on the 1932 Act, recognized that the machinery of the Railway Labor Act channeled these economic forces, in matters dealing with railway labor, into special processes intended to compromise them." 353 U.S., at 40-41.

2. *The absence of a "dispute" under, and the nonapplicability of the procedures of, the Railway Labor Act.*— The present controversy between the respondents and the petitioners as to whether they should embargo the FEC is not, however, a dispute to which the Railway Labor Act's

processes relate.[15]—Where were the Act's processes of compromise here? The Coast Line, the Seaboard, and the Terminal Company never met the men who picketed them, or their representatives, and were never asked to meet with them to "compromise" any "dispute" which they might have had with them, before they saw the men picketing their operations at 3:00 a.m. in the morning of May 4, 1966.—And, in point of fact, they had and have no dispute with them to compromise.

The "special processes intended to compromise" the economic powers of the FEC and the brotherhoods were simply not available to the petitioners. The "procedures of the [Railway Labor] Act are purposefully long and drawn out, based on the hope that reason" will provide a solution; but the fact of the matter is that the Coast Line, the Seaboard, and the Terminal Company have never had any access to the procedures of the Act or any chance to participate in the "reasoning" that would provide a solution to the controversy in which the pickets, strangers to them, seek to embroil them. They have neither any dispute with their employees nor any control over the attitudes of the FEC toward labor problems; indeed, by now it should be obvious that they do not share—as indeed the railway industry generally does not share—the approach

[15] The Railway Labor Act provides procedures for the settlement of minor disputes—those relating to the meaning or proper application of a particular term of an existing contract or practice—and major disputes—those relating to disagreements over the terms and conditions of employment which are to govern subsequent relations between the parties. See *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 722-24 (1945); *Brotherhood of Railroad Trainmen* v. *New York Cent. R. Co.*, 246 F.2d 114 (6th Cir. 1957), *cert. denied*, 355 U.S. 877 (1957). There is simply no machinery in the Act for settling controversies between a carrier and employees of other carriers.

of the FEC to labor relations.[16] And with respect to the respondents' demand that petitioners embargo the FEC, it appears that any attempt to "compromise" that demand would violate petitioners' duties under the Interstate Commerce Act.[17]

Under these circumstances, to hold that the commerce of the Seaboard, the Coast Line, and the Terminal Company may be disrupted overnight, and their duties under the Interstate Commerce Act to provide rail transportation as common carriers placed beyond protection from the federal courts, is to ascribe an absurdity to Congress: that, although the elaborate procedures of the Railway Labor Act must be exhausted before there can be an interruption of regular rail service arising out of a dispute

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[16] A perceptive commentator once described the railroad world for which the Railway Labor Act was designed as follows: "The railroad world is like a state within a state. . . . This state within a state has enjoyed a high degree of internal peace for two generations; despite the divergent interests of its component parts, the rei[illegible] of law has been firmly established." Garrison, *The National Ra[illegible]ad Adjustment Board: A Unique Administrative Agency*, 46 Yal[illegible] J. 567, 568-69 (1937). As Mr. Justice Frankfurter once observed, after quoting from that commentary: "The Railway Labor Act of 1934 is an expression of that 'reign of law' and provides the means for maintaining it. . . . It is fair to say that every stage in the evolution of this railroad labor code was progressively infused with the purpose of securing self-adjustment between the effectively organized railroads and the equally effective railroad unions and, to that end, of establishing facilities for such self-adjustment by the railroad community of its own industrial controversies." *Elgin, J. & E. R. Co.* v. *Burley, supra*, 325 U.S., at 752 (dissenting opinion).—The Seaboard, the Coast Line, and the Terminal Company had no access to any "reign of law" in this matter before the pickets interrupted their operations. They had no opportunity for "self-adjustment" of any controversy with the respondents; indeed, they have no labor dispute with the respondents. It is only through the powers of a federal court that the "reign of law" which Congress contemplated in the Railway Labor Act can be preserved here.

[17] See the discussion in part III2C, pp. 59-64, *infra*.

between a carrier and its employees, a similar disruption may occur overnight when there is no such dispute.—As we demonstrate in part III, the depths of that absurdity increase when it is considered that Congress has made enjoinable similar behavior on the part of unions within industries which are not generally so much affected by the public interest as the rail transportation industry.[18]

If there had been a dispute cognizable under the Act, petitioners would have had the opportunity and the duty to confer with the representatives of *their* employees in an effort to reach a practical and reasonable solution of the problem; the services of the National Mediation Board to assist in that solution would have been available to them; they would have had the opportunity to consider any proffer of binding arbitration of the dispute made by the Board; and if—and the present case presents a clear situation for the exercise of such a remedy—an Emergency Board had been convened under Section 10 of the Railway Labor Act with respect to such a dispute in which petitioners were involved, they would have had the benefit of a further consideration of their position by the Board and

[18] To be sure, that injunction under the LMRA may only be obtained by the National Labor Relations Board. §10(j), 29 U.S.C. § 160(j). But this does not detract from the fact that Congress made such conduct subject to injunction, and, indeed, made it conduct as to which labor unions would have to respond in damages in federal court. See LMRA § 303, 29 U.S.C. § 187. Obviously, the injunctive remedy was restricted to the Board in recognition of the Board's general powers to administer the details of the statutory scheme which Congress had set up under the National Labor Relations Act and the LMRA for industries other than the rail and air transport industries. But in the railroad industry there is no administrative agency with similar powers, and the result is that unless the equity jurisdiction of the federal courts is invocable by the carriers, conduct which Congress has made enjoinable if conducted in a manufacturing or service industry will be free of injunction if conducted so as to interrupt rail transportation. See pp. 53-59, *infra*.

the chance to consider whether that Board's recommendations should be accepted by them with a view to ending the dispute. In the present case the petitioners had none of these rights and were parties to none of these procedures. Nonetheless, they are subjected to picketing which has the effect of halting their operations and are given an ultimatum of imposing an embargo on the FEC in an effort to influence the FEC's position in a controversy with which they are not concerned.

To say that respondents can disrupt the performance of petitioners' duties as interstate carriers at will, simply because petitioners are strangers to the dispute between respondents and the FEC, is to thwart the express purposes of the Railway Labor Act, to avoid "any interruption to commerce or to the operation of any carrier engaged therein," and to provide procedures "for the prompt and orderly settlement of all disputes," without in any way furthering the purposes of the Norris-LaGuardia Act. The position of respondents requires the Court to reach the conclusion that, because of an asserted variance in the concept of "involve or grow out of a labor dispute" [19] in the Norris-LaGuardia Act and the concept of "dispute,"

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[19] The basic restrictions of the Norris-LaGuardia Act upon the grant of injunctions by the federal courts are couched in the following terms: "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case *involving or growing out of any labor dispute* . . ." §§ 4, 7, 29 U.S.C. §§ 104, 107 (emphasis supplied). Thus, the definition of "labor dispute," which, we contend, in this case must be read in conjunction with the provisions of the Railway Labor Act, is critical in determining whether the grant of an injunction is precluded by the Norris-LaGuardia Act. See pp. 36-41, *infra*.

As we discuss in part II below, even apart from the provisions of the Railway Labor Act, the Norris-LaGuardia Act's definition of labor dispute should not be read as precluding the grant of an injunction in this situation.

and the procedures specified for the settlement of "disputes" in the Railway Labor Act, a huge gap was left in the statutory scheme—to be discovered and exploited by respondents for the first time in 1966—and that in this gap neither administrative procedures nor judicial remedies are available to forestall a sudden disruption of vital rail service.

This would be an extraordinary result. It is not explainable by the bland assertion of respondents (Brief in Oppositon to Certiorari, p. 8) that: "The unleashing of the parties to engage in economic warfare has serious consequences to third parties to the dispute and to the public, but this is the necessary and inevitable result of the plan which Congress has devised for the resolution of these disputes."—It is no such thing. When the parties have exhausted the detailed procedures of the Railway Labor Act they are free to employ economic weapons against each other, which, to be sure, will have in many cases an effect on third parties and on the public; but it has never before been suggested that at this juncture the parties to a railway labor dispute have the right to escalate the dispute by applying direct economic warfare against carriers or labor unions not involved in the dispute. Indeed, this Court has recently circumscribed the effect on the public of a dispute between a carrier and certain unions, ripened to the point where self-help was available to the parties, by a decision delimiting the use of what were essentially self-help measures by the carrier against other unions. *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra,* 384 U.S., at 246-48. Similarly, there can be no power in a union to escalate its dispute with one carrier into a "labor dispute" with other carriers, and claim the freedom from injunction which the Norris-LaGuardia Act bestows on "labor disputes." As this Court said in

Brotherhood of Railway Clerks, "self-help" may become "available to both sides of the labor-management controversy" at a prescribed point under the Act (*id.*, at 245), but the Act does not contemplate the use of self-help otherwise than upon the other "side of the labor-management controversy."—Indeed, the Court there indicated that "the strike"—not some more escalated form of economic warfare—is "the ultimate sanction of the union." *Id.*, at 244.

3. *Accommodation of the Acts by accommodating the concepts of "dispute" under them.*—The extraordinary result, contended for by respondents, that neither mediation processes, administrative procedures nor judicial remedies are available to petitioners in this case,[20] does not follow. Rather, it should be held that since this case does not involve or grow out of a dispute between the petitioner carriers on the one hand and the respondent unions on the other which is cognizable under the procedures of the Railway Labor Act, it does not "involve or grow out of a labor dispute" within the meaning and purpose of the Norris-LaGuardia Act, and that consequently the Norris-LaGuardia Act does not bar a limited injunction of the type granted by the District Court.[21]

The wording of the operative provisions of the two statutes supports such a parallel, harmonizing construction. The Norris-LaGuardia Act defines "labor dispute" as including "any controversy concerning terms or conditions

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[20] For the details of respondents' position that there is no court or administrative agency, federal or state, with jurisdiction over their conduct, see pp. 53-54, n. 2, *infra*.

[21] Alternatively, it could be held that, whether or not there was a "labor dispute" within the meaning of the Norris-LaGuardia Act, accommodation with the policies of the Railway Labor Act precluded application of the Norris-LaGuardia Act's bar against injunctions. See *Graham* v. *Brotherhood of Locomotive Firemen*, 338 U.S. 232, 237-38 (1949).

of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment." Section 13(c), 29 U.S.C. § 113(c). The Norris-LaGuardia Act accordingly covers (i) controversies over "terms and conditions of employment" and (ii) controversies over what might be called "representation" matters.

Both of these subject matters are dealt with in detail in the Railway Labor Act. In the Railway Labor Act, the "minor dispute" and "major dispute" provisions cover all controversies concerning the "terms and conditions of employment"; procedures are provided for "the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions," with self-help available only after those procedures are exhausted; and for the "prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions," where a compulsory procedure is provided. See §§ 2(4), 2(5), 3, and 6, 45 U.S.C. §§ 151a(4), 151a(5), 153 and 156. Representational disputes are not permitted, under the Act, to interrupt interstate commerce; a procedure for certification by the National Mediation Board of the representative of the employees is provided, and adherence to that procedure may be enforced by mandatory injunction, despite the provisions of the Norris-LaGuardia Act. Section 2 *Ninth*, 45 U.S.C. § 152 *Ninth; Virginian R. Co.* v. *System Federation, supra; Ruby* v. *American Airlines, Inc.*, 329 F.2d 11 (2d Cir. 1964), *vacated as moot*, 381 U.S. 277 (1965).—Thus, the Railway Labor Act provides procedures to cover the stated categories of controversy with which the Norris-LaGuardia Act is concerned; and where there are no procedures specified in the Railway Labor Act

to adjust a particular controversy, it should not be held that the controversy is one which the Norris-LaGuardia Act leaves to the unfettered, and disruptive, struggle of economic forces.

The purposes of the Act also support this construction. The Railway Labor Act is intended to provide procedures "for the prompt and orderly settlement of *all* disputes"[21]; it was so recognized, with respect to the railroads, when the Norris-LaGuardia Act was passed; it is in the light of this that the meaning of "involving or growing out of a labor dispute" in the Norris-LaGuardia Act must be construed. Where there is no "dispute" with respect to which the parties may invoke the conciliatory procedures of the Railway Labor Act, the case should not be held to be one "involving or growing out of a labor dispute" under the Norris-LaGuardia Act.[22] Otherwise, there would be the gap between the safeguarding procedures of the Railway Labor Act on the one hand and the Norris-LaGuardia Act's ban on injunctions on the other which Congress assumed would not exist when it passed the Norris-LaGuardia Act. (See pp. 26-27, *supra*.)—This harmonization of the concept of "dispute" under the two statutes has been the approach of several well-reasoned cases in the lower federal courts when presented with similar attempts to impede, through secondary picketing, the operations of rail or air transportation terminal facilities. *Chicago & I.M.R.Co.* v. *Brotherhood of Railroad Trainmen*, 315 F.2d 771, 775 (7th Cir. 1963), *vacated as moot*, 375 U.S. 18 (1963); *Lakefront*

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[21] See text, p. 30, *supra* (emphasis supplied).

[22] This approach is, of course, consistent with the decision of this Court in *Manion* v. *Kansas City Terminal R. Co.*, 353 U.S. 927 (1957), where it was held that the Norris-LaGuardia Act barred an injunction where a "minor dispute" existed under the Railway Labor Act as long as the parties refrained from making use of the procedures set forth in the Act.

Dock & R.T.Co. v. *International Longshoremen's Ass'n*, 323 F.2d 549, 553 (6th Cir. 1962); *American Airlines, Inc.* v. *Air Line Pilots Ass'n*, 187 F. Supp. 643 (N.D. Ill. 1960). See *Brotherhood of Railroad Trainmen* v. *New York Cent. R. Co.*, 246 F.2d 114 (6th Cir. 1957), *cert. denied*, 355 U.S. 877 (1957).

Such a holding would be in the tradition of accommodation of the Railway Labor Act and the Norris-LaGuardia Act taught by cases such as *Brotherhood of Locomotive Engineers* v. *Louisville & N.R.Co., supra; Brotherhood of Railroad Trainmen* v. *Chicago River & I.R.Co., supra;* and *Brotherhood of Railroad Trainmen* v. *Howard, supra.* —Indeed, in the last-named case, this Court reached an analogous resolution of a problem created by a similarly asserted "gap" in the statutes. In holding the Norris-LaGuardia Act inapplicable, this Court said that the parties seeking injunctive relief "... must look to a judicial remedy to prevent the sacrifice or obliteration of their rights under the Act. For no adequate administrative remedy can be afforded by the National Railroad Adjustment or Mediation Board .... Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders notwithstanding the provisions of the Norris-LaGuardia Act." 343 U.S., at 774.

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The Railway Labor Act expresses the public policy of Congress for the containment of disputes in the railway industry through the processes of representation certification, arbitration, conciliation, and mediation. The scheme established by Congress to contain the economic forces of the parties to a railway labor dispute would be set at naught if there were any room for the escalation of the economic warfare against carriers not involved in the dis-

pute, such as respondents attempted here. There are many terminals throughout the country in which operations are similar to those of the Jacksonville terminal. This Court has said, of a terminal facility like this one, that it "is a vital link in the national transportation system. Its continuous operation is important to the national flow of commerce." *California* v. *Taylor*, 353 U.S. 553, 566 (1957). Under the theory of the respondents, such a terminal can be shut down with impunity every time there is a lawful strike against one of the various carriers who happens to use it. Indeed, there is no reason to believe that the respondents' theory stops there, for they apparently espouse a theory—absolute immunity under the Norris-LaGuardia Act—which goes beyond actual use by the struck carrier of the particular terminal.

Thus, there is no reason to suppose that the Jacksonville terminal is the only one which, under respondents' theory, they could picket and close down because of their present controversy with the FEC. It is obvious that cars which originate on the FEC and which are interchanged at the Jacksonville terminal must be reinterchanged at other terminals throughout the country to reach destinations off the lines of the carriers who serve Jacksonville; and those cars must also be carried through various terminals throughout the country without interchange. If those FEC-originated cars were not handled through those other terminals, in Richmond or in Chicago or in Kansas City, there would doubtless be further pressure put on the FEC to come to terms with the respondents. Respondents have suggested no basis on which their legal theory stops short of entitling them to picket at any of those terminals—or, indeed, at any place along the line of any carrier interchanging with the FEC—and thus seeking to impose a

nationwide disruption of interstate rail service on the basis of their strike with one recalcitrant carrier."* This Court's cases teaching the necessity for accommodating the two statutes with which we are concerned compel the solution to the problem which we urge.

II. THE NORRIS-LAGUARDIA ACT, EVEN CONSIDERED WITHOUT REFERENCE TO THE RAILWAY LABOR ACT, DOES NOT PRECLUDE THE GRANT OF AN INJUNCTION HERE

While the Court need not reach the question if it should adopt the conclusion we have urged in part I as to the accommodation of the Railway Labor Act and the Norris-LaGuardia Act, there is a further reason why the Norris-

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* Indeed, there has already been some out-of-state picketing by respondents in connection with this case, although it seems so far to be restricted to the picketing of innocent agencies of the federal government:

"FEC STRIKERS TO PICKET IN D.C.—
WHITE HOUSE AND CONGRESS

"Two busloads of railroad union members will carry their war with the Florida East Coast Railway to Washington tonight and will picket the White House and Congress. . . .

"C. J. Winter, Jacksonville strike chairman for the BRT, said, 'We are protesting the Supreme Court action putting off a ruling on picketing at the Jacksonville terminal. What it boils down to is we're starving while the Supreme Court is taking a vacation.'" *Jacksonville Journal*, Jacksonville, Florida, July 11, 1966, p. 1.

When the pickets reached Washington, it appears that they chose not the White House and Congress but a different target for their secondary picketing:

"Fifty trainmen, on strike against the Florida East Coast Railway since 1963, picketed the Justice Department yesterday because, they said, the courts have not acted quickly enough to resolve their dispute with the railroad. . . .

"The group plans to picket the Labor Department today. . . ." *The Washington Post*, July 14, 1966, p. A-27.

LaGuardia Act does not forbid the grant of an injunction here. That is because, analyzed solely in its own terms, the Norris-LaGuardia Act does not apply to conduct of the nature of the picketing involved here.

As the Court of Appeals pointed out (R. 45-46), there is no authoritative holding of this Court to the effect that the Norris-LaGuardia Act forbids the grant of an injunction against what the Court of Appeals characterized as an attempt to impose a secondary boycott, by which it meant the sort of conduct involved here.[1] At the present time, since the subject of what is prohibited and what is permissible secondary conduct in every context but that of a controversy solely within the railway and the airline industries has been taken in hand by the detailed provisions of the Labor-Management Relations Act and the administrative processes of the National Labor Relations Board thereunder, the effect of a holding on the point from this Court would not be of general import except on all-rail situations like the one at bar[2] (or similar situations in the airline industry).—On this undecided issue, we submit that the present case does not "involve or grow out of a labor

[1] The respondents cited three decisions of this Court to the Court of Appeals which they alleged amounted to such a holding. The Court of Appeals evidently concluded, and quite correctly so, that none of the three cases was such a case. See pp. 44-45, n. 4, *infra*.

We shall generally avoid using the term "secondary boycott" herein because it is used with varying meanings. Rather, we shall attempt to focus on the specifics of the respondents' conduct and their controversy with petitioners here.

[2] Presumably, the fact that for the last 19 years the subject has been covered, as far as industries other than the railroads and airlines are concerned, by the exclusive administrative remedies of the LMRA, which are exempt from the Norris-LaGuardia Act, accounts for the fact that there is no authoritative holding from this Court on the point.

dispute," and that accordingly the bar of Sections 4 and 7 of the Norris-LaGuardia Act is not applicable.

The determinative section is the definitional section, Section 13, and, most particularly, Section 13(c). 29 U.S.C. § 113(c). There, the term "labor dispute" is defined as including "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment," and it is made clear that a labor dispute can exist without the "disputants stand[ing] in the proximate relation of employer and employee"; but the requirement remains that a labor dispute be one between persons who are "disputants," whether or not they are employer and employee. *Cf. Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143, 146-47 (1942).

Here, Coast Line, Seaboard and Terminal Company have no dispute with their employees; and they have no dispute "concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment" with the persons who are picketing them or with the brotherhoods which represent these FEC employees.

The only controversy that the brotherhoods and their pickets have with the Coast Line, the Seaboard and the Terminal Company is that they want them to embargo the FEC. This is not a controversy "concerning terms or conditions of employment."[3]—This controversy is thus clearly

[3] There are cases where the subject of the employer's business relationships with other businesses goes to the question of the terms and conditions of employment; most notably, where there is the question of contracting out the employer's work to non-

distinguishable from the controversy involved in this Court's decision in *Marine Cooks and Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), where it was held that there could be no injunction granted against the picketing of a foreign nonunion vessel by domestic maritime unions who were concerned that the substandard wages paid on the vessel tended to deprive American maritime workers of their livelihoods. In that case, obviously there was a dispute between the picketed vessel and the unions as to the "terms or conditions of employment" on the vessel; the point of the picketing was that the wages and other remuneration were too low.[4] Here the picketing is not because of the wages or working conditions that prevail on the lines of the petitioners, but because they interchange cars with a struck carrier.

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union shops, or to shops where substandard wages or conditions prevail. *Cf. Teamsters Union* v. *Oliver*, 358 U.S. 283, 294 (1959). But there is no such claim here; indeed, it is claimed that some of the FEC's work is being done by petitioners, not *vice versa*. Plainly, all that is desired from petitioners is that they cease doing business with FEC, not in an effort to improve the wages, hours or working conditions on petitioners' lines but in order to further the respondents' hand in their dispute at the FEC.

[4] Certain decisions of this Court before the passage of the LMRA, which were cited by respondents to the Court of Appeals as controlling (and apparently rejected by the Court of Appeals), are similarly clearly distinguishable. In *Lauf* v. *E. G. Shinner & Co.*, 303 U.S. 323 (1938), the picketing was clearly primary picketing, directed against an employer by a union which demanded to be recognized as the bargaining agent of the employer's employees; the dispute was thus one "concerning the association or representation of persons in negotiating . . . terms or conditions of employment." In *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938), there again was primary picketing of an employer on the grounds that he practiced racial discrimination in hiring. Clearly, this was a "labor dispute" which concerned "terms or conditions of employment"; that is, what employment practices should be followed by the employer. In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91 (1940), while the Court of Appeals had found that a "secondary boycott" existed

Similarly, it cannot be said within the meaning of Sections 13(a) and 13(b) that this case is one between "persons participating or interested" in a "labor dispute," for Section 13(b) makes it clear that a person situated as are the Coast Line, the Seaboard, and the Terminal Company is to be held a person "participating or interested in a labor dispute" only "if relief is sought against him or it." But, for the reasons we have stated, the only "relief" that is sought against petitioners is that they cease doing business with the FEC; this is not relief of a labor grievance but of a commercial nature. *Cf. Bakery Sales Drivers Union* v. *Wagshal*, 333 U.S. 437 (1948).[8] As this Court has

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and erroneously held that the Sherman Act, which was construed to make "secondary boycotts" unlawful, took precedence over the Norris-LaGuardia Act, this Court did not accept the finding of the Court of Appeals that there was a "secondary boycott," and indeed the facts did not indicate conduct similar to that at bar. The facts were that the union had picketed certain retail milk stores in an effort to unionize them and to make certain of their employees—who purported to be "independent contractors"—join the union. It was clear here that the dispute with the persons picketed was one "concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating . . . conditions of employment." Thus, in each of the three cases cited by respondents below, the labor conditions or representation practices of the person picketed were in controversy. Here there is no question as to the labor conditions or representation practices at Coast Line, Seaboard, or Terminal Company. The only controversy that they have with respondents is over the commercial question whether they should embargo the FEC in order to please and assist respondents.

Similarly, in *United States* v. *Hutcheson*, 312 U.S. 219 (1941), although the practice involved was mischaracterized by the dissent as a secondary boycott (*id.*, at 243), what was involved was picketing and a boycott of products directed immediately at an employer with whom there was a representation controversy, expressly covered by § 13(c) of the Act.

[8] It has been asserted by respondents that the *Wagshal* case is an indication that "secondary boycotts" were meant to be covered by the ban against injunctions contained in the Norris-LaGuardia Act. The passage that has been cited for this purpose appears at

made plain, it is not enough that there be a "person . . . participating or interested in a labor dispute"—as the brotherhoods obviously are in their dispute with the FEC—simply on one side of the case; for an injunction to be barred, "'persons' must be involved on both sides of the case, or the conflicting interests of 'persons' on both sides of the dispute." *United States* v. *United Mine Workers*, 330 U.S. 258, 275 (1947). This is not the case here.[6]—A

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333 U.S., at 442. It is clear that all the Court was saying at this point was stating the argument of one of the parties that the law on "secondary boycotts" (undefined) had been changed, and giving the "short answer" that the Taft-Hartley Act did not alter the law as far as a private party seeking an injunction was concerned—whatever the law as to the enjoinability of a particular form of conduct might be. The conduct at bar in the *Wagshal* case, indeed, was found not to be within the definitions contained in the Norris-LaGuardia Act in the first place.

[6] Respondents have suggested that this case is one "involving or growing out of a labor dispute" within the meaning of § 13 of the Norris-LaGuardia Act on the theory that it involves and grows out of the strike between the FEC and its employees. (Brief in Opposition to Certiorari, pp. 16-17) It is argued that, since the case "involves persons who are engaged in the same industry," it is one "involving or growing out of" the FEC strike if the purpose of the parties doing the picketing is to assist in that strike. No case authority is cited for such an expansive reading of § 13(a). If that were all that was required for a case to "involve or grow out of" a labor dispute, respondents could engage in tertiary or quaternary picketing with impunity—that is, picketing carriers which connect with the Seaboard or the Coast Line, or, for that matter, carriers which connect with those carriers—without fear of a federal court injunction, so long as the ultimate purpose was to pressure the FEC.

The fact of the matter is, however, that § 13(a) is not a complete definition of the term "involving or growing out of"; while § 13(a) defines the sort of persons who may be involved on the different sides of a case which "involves or grows out of a labor dispute," or of a labor dispute itself, it never purports to define what the relationship between the parties engaged in the "labor dispute" and the plaintiffs and defendants in the lawsuit must be for the lawsuit to be one "involving or growing out of a labor dispute"—except for the subsection's references to the definition of "person participating or interested in a labor dispute" in § 13(b),

number of cases in the lower federal courts have held that, where the plaintiff seeking injunctive relief is not a party to a "labor dispute" in which the defendant may be involved, the case is not one "involving or growing out of a labor dispute" and the Norris-LaGuardia Act's ban on injunctions is not to be applied. See, *e.g., Pacific Gamble Robinson Co.* v. *Minneapolis & St. L. Ry. Co.*, 85 F. Supp. 65 (D. Minn. 1949), *appeal dismissed*, 181 F.2d 812 (8th Cir. 1950); *Erie R. Co.* v. *Local 1286*, 117 F. Supp. 157 (W.D. N.Y. 1953); *Louisville & N.R. Co.* v. *Local Union No. 432*, 104 F. Supp. 748, 750 (S.D. Ala. 1952); *Gomez* v. *United Office & Professional Workers*, 73 F. Supp. 679 (D.D.C. 1947); *cf. Baltimore & Ohio R. Co.* v. *Chicago R. & I.R. Co.*, 170 F.2d 654 (7th Cir. 1948), *cert. denied*, 336 U.S. 944 (1949); *Chicago & N.W. Ry. Co.* v. *Toledo, P. & W. R. Co.*, 217 F. Supp. 64 (S.D. Ill. 1963); *Illinois Cent. R. Co.* v. *International Brotherhood*, 90 F. Supp. 640 (W.D. La. 1950). This approach, we submit, is the correct one.

Considerations of the Act's purpose support this view. The purpose of the Norris-LaGuardia Act, declared as the "public policy of the United States" to be applied "in the interpretation of this act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this act," is to assure "the individual unorganized worker" "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment"; and to assure

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which we discuss in the text at pp. 45-46 above. Respondents apparently admit (see Brief in Opposition to Certiorari, p. 17) that they must demonstrate that the petitioners are "persons participating or interested in a labor dispute"; but they are obviously unable to demonstrate the existence of the requirement of § 13(b) that "relief [be] sought against" petitioners in connection with the "labor dispute." —In point of fact, the only redress of grievances sought against petitioners is of a commercial nature, that they embargo the FEC.

that that worker "be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ." Section 2, 29 U.S.C. § 102. As this expression of purpose, and as the other relevant authorities make plain, the Norris-La Guardia Act was designed as a shield for unions against strikebreaking through judicial intervention on behalf of their adversaries. It was not designed as an aggressive weapon enabling unions to drag strangers into their controversies in order to bring enhanced pressure on those with whom they may have a dispute.

Petitioners are not attempting to break respondents' strike against the FEC and are not asking the federal courts to curtail respondents' legitimate rights to picket the FEC. The injunction is carefully limited in scope and permits respondents to picket the gate at the terminal facility used by FEC employees; they are also free to picket anywhere up and down the FEC's line throughout the length of Florida. Petitioners merely seek to be left alone by respondents, with whom they have no dispute, and who seek no redress of any grievance concerning "terms and conditions of employment" or "concerning the association or representation of persons" from petitioners.

As the dissenting judge below pointed out, the essential purpose of the Norris-LaGuardia Act was to reverse the holdings which had grown up under Sections 6 and 20 of the Clayton Act, to the effect that the anti-injunction provisions of Section 20 applied only in the employment relationship, thereby excluding from its protections labor unions themselves, which were not employees (*Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443 (1921)), and

excluding from its protections strikers, who were held no longer to be "employees." *Dail-Overland Co.* v. *Willys-Overland, Inc.*, 263 Fed. 171, 188 (N.D. Ohio 1920). The legislative history does not evidence any desire by Congress to make immune from injunction the imposition of economic force on strangers to a dispute.

It would be paradoxical at this late date, nineteen years after Congress has set the face of national labor policy against secondary conduct such as this through passage of the LMRA, for this Court to hold for the first time that in the areas not in terms covered by the LMRA's provisions for administrative relief, the federal courts are powerless to prevent such conduct.[7] While harmonizing the Railway Labor Act's "dispute" concept with the definition of "labor dispute" under the Norris-LaGuardia Act would make decision on the contentions we have made in this part II unnecessary, we submit that if the Court does not agree with us on point I that it should not hold, at this late date, the

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[7] Of course, a holding that the Norris-LaGuardia Act does not insulate conduct of the sort here at bar from injunction will not permit private parties to seek injunctions against similar or assertedly similar conduct in the field of non-rail and non-airline industries covered by the LMRA. The LMRA contains provisions for administrative remedies against certain specified conduct of a secondary nature (see § 8(b)(4)), and affords an injunctive remedy purely at the suit of the NLRB to obtain preliminary relief against such practices. Section 10(j), 29 U.S.C. § 160(j). See *Local No. 438* v. *Curry*, 371 U.S. 542, 546-47 (1963). Conduct not proscribed by § 8(b)(4) would obviously be either protected conduct under § 7 of the Act, which is not subject to injunction from any court, federal or state, by reason of the supremacy of § 7, or conduct which is "arguably protected" where the regulatory regime of the Board must function in the first instance. That regulatory regime, within the scope where it operates, certainly would preclude a federal court injunction at the suit of a private party as much as a state court injunction. *Cf. Pan American World Airways, Inc.* v. *United States*, 371 U.S. 296 (1963); *Keogh* v. *Chicago & N.W. R. Co.*, 260 U.S. 156 (1922).

Norris-LaGuardia Act of itself makes the federal courts powerless to act against secondary conduct of the sort involved here.

III. THE COMPLAINT IN THIS MATTER STATED A CLAIM ARISING UNDER FEDERAL LAW AND THE PROOFS JUSTIFIED THE GRANT OF THE LIMITED PRELIMINARY INJUNCTION

While the sole ground of the Court of Appeals' decision was that the Norris-LaGuardia Act had withdrawn any jurisdiction in the federal courts to grant the injunctive relief which had been afforded by the District Court, the respondents also tendered to the Court of Appeals the issue whether the preliminary injunction was properly granted on its merits, apart from the Norris-LaGuardia Act point. The scope of review of a district court's grant of a preliminary injunction on appeal is limited, inasmuch as the grant of such an injunction, once jurisdiction is shown, lies within the sound discretion of the district court, not to be disturbed except for abuse of that discretion. See *United States* v. *Corrick*, 298 U.S. 435 (1936); *Mayo* v. *Lakeland Highlands Canning Co.*, 309 U.S. 310 (1940). Nonetheless, we will brief the merits of the District Court's issuance of the limited preliminary injunction so that this Court, if it is so advised, may dispose of all the issues arising from the appeal taken by respondents from that injunction. To a great extent, of course, the same considerations, drawn from the Railway Labor Act, which teach that the Norris-LaGuardia Act and the Railway Labor Act must be accommodated here, also indicate the illegality of the picketing under federal law.

1. The complaint stated a claim under the Interstate Commerce Act and the Railway Labor Act; and the juris-

diction of the District Court was properly invoked under 28 U.S.C. §§ 1331 and 1337. The Interstate Commerce Act, as this Court recently recognized in *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra,* 384 U.S., at 244-45, imposes a federally created duty upon petitioners to furnish transportation service to the public. (Section 1(4), 49 U.S.C. § 1(4)) That Act also imposes upon them a federally created duty to provide interchange services with other carriers. (Sections 1(4) and 3(4), 49 U.S.C. §§ 1(4), 3(4)) It has been repeatedly held by this Court and the lower federal courts that there is jurisdiction in the federal courts over suits to remove obstructions to the performance of that duty. *Ex parte Lennon,* 166 U.S. 548 (1897); *Brotherhood of Railroad Trainmen* v. *New York Central R. Co., supra,* 246 F.2d, at 121; *Chicago & I.M.R.Co.* v. *Brotherhood of Railroad Trainmen, supra,* 315 F.2d, at 774.—Likewise, it has been repeatedly held that there is jurisdiction in the federal courts to consider claims of violations of the purposes and policies of the Railway Labor Act. See *Tunstall* v. *Brotherhood of Locomotive Firemen,* 323 U.S. 210 (1944); *Graham* v. *Brotherhood of Locomotive Firemen,* 338 U.S. 232 (1949); *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U.S. 768 (1952); *Brotherhood of Locomotive Engineers* v. *Louisville & N.R.Co.,* 373 U.S. 33 (1963). As we have demonstrated in part I, this case involves such violations.

2. As revealed by the facts of record, the picketing was unlawful as a matter of federal law on three separate bases, any one of which would be sufficient to justify the injunction to prevent the irreparable harm to the petitioners and to the public threatened by it. The picketing was unlawful because (a) it violated the purposes and policies of the Railway Labor Act while disrupting the performance of

the petitioners' public duties under the Interstate Commerce Act; (b) it is conduct which impeded petitioners in the performance of their duties without justification, since it was contrary to the national labor policy which Congress has expressed in the Labor Management Relations Act ("LMRA"); and (c) its objectives are unlawful in that it seeks to require the petitioners to impose an unlawful embargo upon the FEC. Each of these bases of illegality, which entitle the petitioners and the public to an appropriate form of injunctive relief, is founded on a federal statute; each by itself amply justifies the District Court's limited injunction.

A. As we have demonstrated in part I above, the means used by respondents—picketing the innocent carriers—violated the purposes and policies of the Railway Labor Act to confine and canalize the economic forces in the hands of labor and management in the railroad industry and to restrict the ultimate remedy of self-help to a limited number of situations, regulated by the Act. Since a purpose of the Railway Labor Act is to prevent interruptions of rail commerce, and since nothing in the Act contemplates the use of self-help directly against persons subject to the Act who are not parties to a dispute, the conduct involved here was an unlawful exercise of self-help under the Railway Labor Act, and accordingly was an unlawful means, under federal law, of the respondents' pursuing their controversy with the FEC. Since the picketing involved an obstruction of the duties of the petitioners under the Interstate Commerce Act[1] in contravention of the policies of the Railway Labor Act, it was properly enjoinable.

[1] For the statutory provisions, see p. 60, *infra*. Indeed, the obstruction went far beyond the obstruction of interchange activities with the FEC, and shut down the entire transportation operations of petitioners into, out of and through the Jacksonville terminal. "The Interstate Commerce Act . . . places a responsibility on

B. Moreover, the actions of respondents, detrimental to the public and to the petitioners' public duties, were without legal justification in that they were of a nature violative of Congress' national labor policy as set forth in the LMRA. The pertinent provisions of the LMRA have the purpose of "shielding unoffending employers and others from pressures in controversies not their own." *NLRB* v. *Denver Bldg. & Construction Trades Council*, 341 U.S. 675, 692 (1951).

To be sure, the LMRA does not in terms apply to a controversy of this sort, which is entirely within the railroad industry.[2] But that does not mean that the policy of that

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common carriers by rail to provide transportation. The duty runs not to shippers alone but to the public." *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra*, 384 U.S., at 244-45.

[2] Employers subject to the Railway Labor Act are excluded from the definition of "employer" under the LMRA, and their employees are excluded from the definition of "employee" thereunder. §§ 2(2) and 2(3), 29 U.S.C. §§ 152(2), (3). "Labor organizations" are subject to the LMRA only if "employees" as so defined participate in them. See § 2(5), 29 U.S.C. § 152(5). This Court has declared: "It is clear that neither railroads nor their employees may carry their grievances with one another to the N.L.R.B. for resolution. . . . We think it clear that Congress, in excluding 'any person subject to the Railway Labor Act' from the statutory definition of 'employer,' carved out of the Labor Management Relations Act the railroads' employer-employee relationships which were, and are, governed by the Railway Labor Act." *Local Union No. 25* v. *New York N.H.&H.R. Co.*, 350 U.S. 155, 159-60 (1956). The 1959 amendments to § 8(b)(4) of the Act extended that provision to make it apply where railroads were the victims of secondary conduct, but only by a non-rail union. § 704, Pub. L. 86-257, 73 Stat. 542. See *United Steelworkers* v. *NLRB*, 376 U.S. 492 (1964). Suffice it to say that if this matter is within the jurisdiction of the NLRB, it would be hard to imagine a railway labor matter that was not. See the discussion in the Brief in Opposition in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Company*, No. 244, O.T. 1966, pp. 13-18.

The present respondents, as petitioners in that case, are contending that while, as they insist, they are not subject to the

Act can be ignored by a federal court in evaluating the legality of respondents' conduct. The outlawry of certain sorts of secondary activities in the LMRA was a deliberate and much-debated response by Congress to limit certain excesses which had been encountered under the National Labor Relations Act. It scarcely could be argued that Congress did not extend these prohibitions to the railroad industry because it thought that secondary boycotts in the transportation field were a salutary thing. To make that assumption would be to assume that Congress, while forbidding the disruptive effects of a secondary boycott on innocent parties in industry generally, was willing to tolerate them in the transportation industries where their effects would generally be the more disastrous.[3] But only if such an assumption can be made are the standards set forth by Congress under the LMRA irrelevant to a

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LMRA (Petition, No. 244, p. 16), the question is "an arguable one" (although no one seems willing to argue it) and accordingly there should be no state court jurisdiction to enjoin their activities—even as they are contending here that there is no federal court jurisdiction—and, in the light of their position that they are not subject to the LMRA, no federal agency jurisdiction—to enjoin their conduct.

[3] Indeed, Congress amended the relevant provision of the LMRA in 1959 to make it clear that there could be relief granted against unlawful secondary picketing directed against railroads by non-rail employees. § 704, Pub. L. 86-257, 73 Stat. 542. Since this sort of picketing generally involves a tie-up simply of access to a shipper's plant or group of plants, its effect generally is considerably less adverse than secondary picketing by rail employees such as was involved here. See *United Steelworkers* v. *NLRB*, 376 U.S. 492, 500-01 (1964). There is nothing in the legislative history of the 1959 amendment which indicates that Congress had any desire affirmatively to sanction secondary picketing by the employees of one rail carrier against another, and to ascribe such an intent to Congress by implication appears highly paradoxical. Indeed, the clear thrust of the Congressional discussions was that the purpose of the amendment was to "close loopholes" under which the secondary boycott might be available. See 105 Cong. Rec. 6666-67; 15,532; 17,898 (1959). As Congressman Griffin, one of the authors

federal court faced with the problem of determining the legality of conduct such as that of respondents.

Section 8(b)(4) of the National Labor Relations Act, as amended by the LMRA, in pertinent part makes it unlawful for a labor organization:

> "(i) to engage in, or to induce or encourage any individual employed by any person . . . to engage in, a strike or a refusal in the course of his employment . . . to perform any services; or (ii) to threaten, coerce, or restrain any person . . . where in either case an object thereof is— . . . .
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> "(B) Forcing or requiring any person . . . to cease doing business with any other person . . . *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

The picketing here was obviously an attempt—and a successful one—both to encourage the employees of Coast Line, Seaboard, and Terminal Company to refuse to perform services, and to restrain the operations of Seaboard, Coast Line and Terminal Company; and its purpose was manifestly to force and require Seaboard, Coast Line and Terminal Company "to cease doing business with . . . [another] person," the FEC. Further, under the decisions of this Court, the picketing was not primary picketing of a sort which is saved by the proviso. See *Electrical Workers* v. *NLRB,* 366 U.S. 667 (1961); *United Steelworkers* v. *NLRB,* 376 U.S. 492 (1964). Obviously, the picketing was

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of the 1959 Act, said: "That it was the clear and unequivocal intention of Congress in 1947 to outlaw the evils of secondary boycotts can be illustrated . . . from the legislative history"; and the 1959 amendment was intended in furtherance of that policy. 105 Cong. Rec. 15,531 (1959).

not at the premises of the FEC. *Cf. Electrical Workers* v. *NLRB, supra.* Nor is this a case where the picketing was restricted to a place, not on the primary employer's premises, which was in effect a continuation of his premises, and where "the picketing employees made no attempt to interfere with any of the [connecting] railroad's operations for" persons other than the FEC. *Cf. United Steelworkers* v. *NLRB, supra,* 376 U.S., at 499. Here the entire premises of the Terminal Company, at which activities that involve the FEC in any fashion play only a minor part, were picketed; the pickets carried the message "Do Not Cross"; there was no "attempt to minimize the effect of [the] picketing . . . on the operations of the neutral employers utilizing" the terminal;[4] and the picketing had its intended effect: all activities and movements within the terminal, not simply those for the account of the FEC, were brought to a halt.[5]

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[4] *Electrical Workers* v. *NLRB, supra,* 366 U.S., at 678.

[5] At the most, the terminal site is what is called a "common situs," in the language of the cases under the LMRA. Indeed, in view of the fact that the operations of the struck employer at the situs here are minimal, it is an unusual sort of "common situs." The NLRB has evolved and the courts have approved rules to govern situations where a union has a dispute with an employer whose work is carried on at a place where other neutral employees are also at work. When such picketing is involved, the Board has been particularly careful to be certain that the picketing is "conducted so as 'to minimize its impact on neutral employees. . . .'" *Building Trades Council,* 60 L.R.R.M. 1296, 1298 (NLRB, Oct. 25, 1965), *appeal pending,* 5th Cir. In *District Council of Painters,* 60 L.R.R.M. 1075 (NLRB, Sept. 7, 1965), *enforcement ordered,* 361 F.2d 70 (D.C. Cir. 1966), for example, the Board held it an unfair labor practice for a union to picket the main gate of a common construction site when a special gate had been set aside for the employees of the struck employer. The Board has stated that the *Electrical Workers* and *Steelworkers* cases, dealing with picketing on or adjacent to the primary employer's premises, did not affect the rule for common situs picketing. *Building Trades Council, supra,* 60 L.R.R.M., at 1297-99. The fact that work is done by the primary employer at the common situs is

Even where the picketing is at a site primarily occupied by the struck employer, as was not the case here, the cases hold that picketing at a gate used by employees of a neutral employer is permissible only where the neutral employers who were picketed "were connected with the normal operations of the [primary] employer . . . ." *United Steelworkers* v. *NLRB, supra,* 376 U.S., at 497. But here the picketing took place all around the periphery of the terminal, at all the lines bringing Seaboard and Coast Line trains into the terminal, where the Seaboard and Coast Line employees who enter in no case perform any work whatsoever for the FEC, and where, in some cases, none of them are likely to participate in interchanges with the FEC.[6] (See pp. 5-7 and notes; p. 10 n. 14, *supra.*)

While FEC employees work on the terminal premises, they have their own gate, and the injunction was carefully limited so as to permit the primary picketing that could be carried on there. (R. 20, 30) The picketing at the other gates represents the clearest kind of proscribed secondary activity. It can hardly be characterized as "an unavoidable by-product of the legitimate primary picketing." *Building Trades Council,* 60 L.R.R.M. 1296, 1299 (NLRB, Oct. 25, 1965), *appeal pending,* 5th Cir.

Similarly, the repeated assertion by respondents that the activities going on inside the terminal are "struck

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o justification for picketing the gate through which the neutral mployees enter. See *Building Trades Council,* 60 L.R.R.M. 1296 NLRB, Oct. 25, 1965), *appeal pending,* 5th Cir.; *Millwrights ocal No. 1102,* 60 L.R.R.M. 1509 (NLRB, Dec. 6, 1965).

[6] As we develop below, the Seaboard and Coast Line employees' ork performing interchanges of cars with the FEC does not mount to doing work for the FEC; it is work done for their own nployer in picking up or delivering cars. FEC employees do their nployer's work in picking up from, or delivering cars to, the her carriers.

work," that is, work which would normally be performed by the primary employer, the picketing of which might be considered primary, has no support in the record.[7] It does not appear that any of the work at the terminal is part of the primary operation of the FEC other than the FEC's interchange moves, which are, of course, handled by the FEC's own crews (see p. 5, n. 6, *supra*); and picketing them at their own gate, or their own separate yard, is not affected by the injunction. The throwing of switches by Terminal Company employees for the FEC moves clearly, on the record, was the same as that characteristically performed by the Terminal Company as an "independent contractor" for all carriers using the terminal. (R. 64-65, 109, 110) The moves by Coast Line and Seaboard switching crews within the terminal or their cars destined for interchange with the FEC are no more an extension of the FEC's work than the production of raw materials by a supplier for sale to a struck manufacturer. The work done on the daily FEC passenger train by the Terminal Company Mechanical Department was work characteristically done by an independent contractor—the Mechanical Department did the same for the Coast Line's and the Seaboard's vastly more extensive passenger operations (R. 113, 133)—and in any event the work done for the FEC is clearly *de minimis*.[8] And, of course, the bulk of the moves through the terminal, passenger and freight, switching moves as well as the extensive main-line traffic through the terminal handled by Coast Line

[7] The LMRA cases recognize an "ally" doctrine, under which the picketing of other employers doing work normally performed by the struck primary employer is permitted as primary picketing. See, *e.g.*, *NLRB* v. *Business Machine Local 459*, 228 F.2d 553 (2d Cir. 1955), *cert. denied*, 351 U.S. 962 (1956).

[8] See p. 7, n. 9, *supra*. The remoteness of the FEC yards from the terminal—located as they are twelve miles down the far side of the St. Johns River—and the necessity for the FEC passenger trains to enter a downtown terminus, would have been a reason for the

and Seaboard road crews, had nothing at all to do with the FEC. (See pp. 4-7 and notes, *supra*) Yet all of these activities were stopped by the picketing. To call this "an unavoidable by-product of the legitimate primary picketing" is to make a very small—and severable—tail wag a very large dog.

It is plain, then, that the picketing, apart from that at the reserved gate, was entirely the sort of secondary activity against which Congress set a national public policy in the LMRA. We submit that in judging the legality of respondents' actions, a federal court may, and should, take that general statutory policy into account. It would be myopic to construe one of the two great federal statutes substantively regulating labor relations without regard to the other. *Cf. Southern Steamship Co.* v. *NLRB,* 316 U.S. 31, 47 (1942); see *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 487 (1951); *NLRB* v. *John W. Campbell, Inc.,* 159 F.2d 184, 186 (5th Cir. 1947). Certainly the statutory analogy is relevant in assessing the factors which must be weighed with the manifest public and private harm caused by respondents' actions in determining whether those actions are legally justified.

C. Finally, the picketing in question here is unlawful because it seeks to have the petitioners commit acts in violation of their statutory duties. The declared purpose of the picketing is to make the Seaboard, the Coast Line and the Terminal Company cease interchanging cars with the FEC. But this would be a violation of their duties under the Interstate Commerce Act, redressable by civil

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erformance of this work by an independent contractor in any vent, even apart from the practice of the other carriers. See p. n. 9, *supra.*

suits for damages[9] and mandatory injunctions[10] and by criminal pains and penalties.[11]

Section 1(4) of the Interstate Commerce Act provides that: "It shall be the duty of every common carrier subject to this act to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers. . . . " 49 U.S.C. § 1(4). And Section 3(4) of the Act requires that: "All carriers subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines. . . . " Numerous through routes have been established by the Coast Line and Seaboard with the FEC, of long standing and antedating the FEC's strikes, requiring interchange of cars at the Jacksonville Terminal.

The duty to effect the interchanges on those through routes—"the primary duty to receive and transport cars of a connecting carrier"—may be enforced by mandatory injunction at the suit of a connecting carrier or of a shipper using the through routes. *Peoria & Pekin U.R. Co.* v. *United States,* 263 U.S. 528, 535 (1924). No case holds that this duty of a common carrier ceases simply because a connecting carrier is subject to a strike, as long as that connecting carrier continues to be able to tender and receive cars at the interchange point; indeed, the decided cases teach that a strike furnishes no excuse to the

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[9] Section 8, Interstate Commerce Act, 49 U.S.C. § 8.

[10] *Peoria & Pekin U.R. Co.* v. *United States,* 263 U.S. 528, 535 (1924).

[11] Section 10(1), Interstate Commerce Act, 49 U.S.C. § 10(1).

performance of that duty.[12] Neither does any case suggest that the imposition of economic pressure upon a common carrier, such as that which the picketing here was designed to do, excuses it in terminating interchange service and interrupting established through routes.—Moreover, the FEC has obtained a mandatory injunction against petitioners, requiring them to continue to make the interchanges. This order was obtained in a contested proceeding brought by FEC against the Terminal Company, Seaboard, Coast Line and the other carriers using the terminal in 1963 shortly after the nonoperating employees' strike began at FEC, presumably in anticipation by FEC of some action like the present picketing. *Florida East Coast R. Co.* v. *Jacksonville Terminal Co.*, No. 63-16-Civ.-J., M.D. Fla. (R. 198, 207, 258-64, 265-68, 245-54)[13]

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[12] See *Chicago, B.&Q.R. Co.* v. *Burlington C.R.&N.R. Co.*, 34 Fed. 481 (C.C.S.D. Iowa 1888); *Toledo, A.A.&N.M.R. Co.* v. *Pennsylvania Co.*, 54 Fed. 730, 746 (C.C.N.D. Ohio 1893), *appeal dismissed*, 150 U.S. 393 (1893). Compare *Montgomery Ward & Co.* v. *Consolidated Freightways, Inc.*, 42 I.C.C. 225 (1943), where the Commission simply held that the refusal of a motor carrier's employees to cross a picket line "physically prevented" the carrier from furnishing service. There is no counterpart to §§ 1(4) and 3(4) in the case of motor carriers. Here the picketing prevented the petitioners from using the terminal facility at all; there is no particular "physical reason," other than the wishes of the unions, which dictates the desired permanent interruption of service to the FEC. Other cases reach a contrary conclusion to *Consolidated Freightways* on similar facts. See *Montgomery Ward & Co.* v. *Northern Pacific Terminal Co.*, 128 F. Supp. 475 (D.Ore. 1953); *Merchandise Warehouse Co.* v. *A.B.C. Freight Forwarding Corp.*, 165 F. Supp. 57 (S.D.Ind. 1958); *Quaker State Motor Parts Co.* v. *Interstate Motor Freight System*, 148 F. Supp. 226 (E.D. Pa. 1957).

[13] It was only after a preliminary injunction was granted that a compromise of the action, dismissing a claim for damages while continuing the injunction, was reached. (R. 269-73)

The respondents have suggested[14] that the situation is one in which an embargo may lawfully be imposed upon the FEC.[15] No case supports the proposition that the existence of a strike on a connecting carrier is a valid reason for the declaration of an embargo. The provisions of Section 1(15) of the Interstate Commerce Act, which refer to the sort of conditions which surround the declaration of an embargo, make reference to the factors of "shortage of equipment, congestion of traffic, or other emergency requiring immediate action." The case law is to the effect that an embargo may be declared when there is "traffic congestion or other physical or operation conditions [making] . . . it impossible for the carrier to provide transportation to a particular area." *New York Cent. R. Co.* v. *United States,* 201 F. Supp. 958, 959 (S.D.N.Y. 1962), *vacated as moot,* 371 U.S. 805 (1962). The FEC's strike is not such a reason; the FEC is physically able to tender the cars it wishes to have interchanged and to receive the

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[14] See the "Memorandum of Respondents in Opposition to Petitioners' Application for an Order Staying Proceedings, *etc.*," pp. 18-21, filed in this Court.

[15] Embargoes are levied by the carriers, as a matter of practice. Respondents have suggested that the ICC itself has power to declare embargoes, based on the provisions of § 1(15) of the Interstate Commerce Act, which reads in pertinent part: "Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is given, authority . . . to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them." Petitioners contend that this only gives the Commission power to regulate priorities in an embargo once one has otherwise been declared. Of course, the Commission has power to annul embargoes imposed by the carriers. *New York Central R. Co.* v. *United States,* 201 F. Supp. 958, 959 (S.D.N.Y. 1962), *vacated as moot,* 371 U.S. 805 (1962). In any event, the substantive principles as to when an embargo may lawfully be declared remain the same.

cars that are delivered to it for interchange to destinations on its line. Indeed, no authority supports the proposition that an embargo may be declared against one carrier and not against all carriers at a particular point.[16]

Respondents have suggested that the physical congestion that occurred in the Jacksonville terminal when the picketing commenced is the sort of physical, operating emergency that would justify the declaration of an embargo.[17] It is a strange argument to say that picketing is lawful when it seeks to induce the imposition of an embargo when the only thing which is alleged to justify the imposition of the embargo is the picketing itself. The argument is manifestly unsound; it is not the interchange which is causing the operating crisis but the picketing. And if an embargo were declared, the picketing would cease; the physical and operating crisis would be at an end; what then would be the justification for the continuation of the embargo?

Finally, the suggestion that an embargo may be declared either because of a strike on a connecting carrier or because of picketing which seeks to have such an embargo imposed, is an argument that assumes that the statutory policy of the United States is in favor of the escalation of railway labor disputes, not their containment. Its ac-

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[16] The ICC has assigned its powers under § 1(15) to the Association of American Railroads under § 1(17) of the Act. The regulations of the Association of American Railroads adopted pursuant to the assignment of functions to it under § 1(17) provide that "embargoes are prohibited . . . to control the routing of traffic to or via any particular gateway or road." Circular CAD-87, Third Revision, Car Service Division, Association of American Railroads. Thus, the pertinent regulations support the proposition that an embargo may not be declared against "a particular road" in these circumstances.

[17] See "Memorandum of Respondents in Opposition to Petitioners' Application for an Order Staying Proceedings, *etc.*," p. 18, filed in this Court.

ceptance would mean that a strike on one carrier would automatically escalate into an incident of regional or national proportions. It would tend to destroy the ability of the struck carrier to use self-help to run the struck railroad the best it can, which, as this Court made clear in *Brotherhood of Railway Clerks* v. *Florida East Coast R. Co., supra,* 384 U.S., at 244-45, remains a struck carrier's duty. It would be strange to say that the struck carrier was duty bound to keep up operations the best it could, but that its connecting carriers on the other hand were at liberty to suspend their normal duty to interchange with it. The existence of such an authority in connecting carriers to embargo a struck carrier would have profound and disturbing implications for the nation's railway labor policies. Its effect would be to make more ruinous and more absolute the weapons of self-help which the Railway Labor Act contemplates the parties to a railway labor dispute will have only as the ultimate weapon.

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Thus, the picketing here was in violation of the purposes and policies of the Railway Labor Act; it was picketing of a sort which contravenes the national labor policy set forth by Congress; and it was picketing which sought to compel the petitioners to violate the duties imposed upon them by federal law. For each and all of these reasons, the picketing was, on the merits, properly enjoined by the District Court.

CONCLUSION

For the reasons stated, the judgment of the Court of Appeals should be reversed, and the order of the District Court granting the limited preliminary injunction should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

Statutory Provisions

1. The Railway Labor Act.

The text of the Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C. §§ 151 *et seq.*, is as follows:

"DEFINITIONS

"SECTION 1. When used in this Act and for the purposes of this Act—

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': *Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether

any line operated by electric power falls within the terms of this proviso. The term 'carrier' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

"Second. The term 'Adjustment Board' means the National Railroad Adjustment Board created by this Act.

"Third. The term 'Mediation Board' means the National Mediation Board created by this Act.

"Fourth. The term 'commerce' means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

"Fifth. The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define

the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

"The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

"Sixth. The term 'representative' means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

"Seventh. The term 'district court' includes the United States District Court for the District of Columbia; and the term 'court of appeals' includes the United States Court of Appeals of the District of Columbia.

"This Act may be cited as the 'Railway Labor Act'.

"GENERAL PURPOSES

"SEC. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settle-

ment of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own

choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided,* (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further,* That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, re-

gardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third,

fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided,* That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided,* That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided,* That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to sub-

par graph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—
INTERPRETATION OF AGREEMENTS

'SEC. 3. First. There is hereby established a Board, to
known as the 'National Railroad Adjustment Board', the
mbers of which shall be selected within thirty days after
proval of this Act, and it is hereby provided—

'(a) That the said Adjustment Board shall consist of
rty-six members, eighteen of whom shall be selected by
carriers and eighteen by such labor organizations of the
ployees, national in scope, as have been or may be organ-
d in accordance with the provisions of section 2 of this
t.

'(b) The carriers, acting each through its board of direc-
s or its receiver or receivers, trustee or trustees or
ough an officer or officers designated for that purpose by
h board, trustee or trustees or receiver or receivers,
ll prescribe the rules under which its representatives
ll be selected and shall select the representatives of the
riers on the Adjustment Board and designate the divi-
n on which each such representative shall serve, but no
rier or system of carriers shall have more than one
resentative on any division of the Board.

(c) The national labor organizations, as defined in
agraph (a) of this section, acting each through the chief
cutive or other medium designated by the organization
ssociation thereof, shall prescribe the rules under which
labor members of the Adjustment Board shall be se-
d and shall select such members and designate the
sion on which each member shall serve; but no labor
nization shall have more than one representative on
division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in

ecordance with section 2 hereof and is otherwise properly ualified to participate in the selection of the labor mem-ers of the Adjustment Board, and the findings of such oards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be ompensated by the party or parties he is to represent. ach third or neutral party selected under the provisions f (f) of this section shall receive from the Mediation Board uch compensation as the Mediation Board may fix, to-ether with his necessary traveling expenses and expenses tually incurred for subsistence, or per diem allowance in eu thereof, subject to the provisions of law applicable ereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of our divisions, whose proceedings shall be independent of ne another, and the said divisions as well as the number of eir members shall be as follows:

"First division: To have jurisdiction over disputes in-olving train- and yard-service employees of carriers; that engineers, firemen, hostlers, and outside hostler helpers, nductors, trainmen, and yard-service employees. This vision shall consist of ten members, five of whom shall be lected and designated by the carriers and five of whom all be selected and designated by the national labor organ-ations of the employees.

"Second division: To have jurisdiction over disputes in-lving machinists, boilermakers, blacksmiths, sheet-metal rkers, electrical workers, car men, the helpers and ap-ntices of all the foregoing, coach cleaners, power-house ployees, and railroad-shop laborers. This division shall sist of ten members, five of whom shall be selected by

the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(*l*) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the contro-

versy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless

they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respec-

tive divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice-chairmanship of any division shall alternate as betwen the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members

of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

"NATIONAL MEDIATION BOARD

"SEC. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the aproval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same man-

ner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of $15,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

"All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

"A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

"Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

"Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1949, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board,

Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and [*sic*] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

"Fifth. All officers and employees of the Board of Mediation (except the members thereof, whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or com-

pensation to conform to the duties to which such officers and employees may be assigned.

"All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

"FUNCTIONS OF MEDIATION BOARD

"SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify

both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

"Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

"(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

"If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this Act for an original appointment by the Mediation Board.

"(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

"(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

"(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall there-

upon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

"(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or

ates of pay, rules, and working conditions have been made effective.

"(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

"PROCEDURE IN CHANGING RATES OF PAY, RULES, AND WORKING CONDITIONS

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by

the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

"ARBITRATION

"SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

"Second. Such board of arbitration shall be chosen in the following manner:

"(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

"(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a

majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

"Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Board of Mediation; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

"(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

"(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

"Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

"(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

"(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

"(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided*,

however, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

"(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

"Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

"(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may

invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

"Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

"SEC. 8. The agreement to arbitrate—

"(a) Shall be in writing;

"(b) Shall stipulate that the arbitration is had under the provisions of this Act;

"(c) Shall state whether the board of arbitration is to consist of three or of six members;

"(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Board of Mediation, and, when so acknowledged, shall be filed in the office of the Board of Mediation;

"(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

"(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitra-

tion may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

"(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

"(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

"(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided,* That the parties may agree at any time upon an extension of this period;

"(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

"(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

"(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

"(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

"(n) Shall provide that the respective parties to the award will each faithfully execute the same.

"The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

"SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

"Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which

the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

"Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

"(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

"(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

"(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

"Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties

shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

"Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

"Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

"Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

"Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

"EMERGENCY BOARD

"SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

"There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

"GENERAL PROVISIONS

"SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act."

2. **The Norris-LaGuardia Act.**

The text of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*, is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

"SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of owner-

ip association, the individual unorganized worker is com-
nly helpless to exercise actual liberty of contract and
protect his freedom of labor, and thereby to obtain ac-
otable terms and conditions of employment, wherefore,
ough he should be free to decline to associate with his
lows, it is necessary that he have full freedom of asso-
tion, self-organization, and designation of representa-
es of his own choosing, to negotiate the terms and con-
ions of his employment, and that he shall be free from
interference, restraint, or coercion of employers of
or, or their agents, in the designation of such repre-
ntatives or in self-organization or in other concerted ac-
ities for the purpose of collective bargaining or other
tual aid or protection; therefore, the following defini-
ns of, and limitations upon, the jurisdiction and authority
the courts of the United States are hereby enacted.

'SEC. 3. Any undertaking or promise, such as is de-
ibed in this section, or any other undertaking or promise
conflict with the public policy declared in section 2 of
s Act, is hereby declared to be contrary to the public
licy of the United States, shall not be enforceable in any
rt of the United States and shall not afford any basis
the granting of legal or equitable relief by any such
rt, including specifically the following:

'Every undertaking or promise hereafter made, whether
tten or oral, express or implied, constituting or con-
ed in any contract or agreement of hiring or employ-
nt between any individual, firm, company, association, or
poration, and any employee or prospective employee
he same, whereby

(a) Either party to such contract or agreement under-
s or promises not to join, become, or remain a member

of any labor organization or of any employer organization; or

"(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising,

peaking, patrolling, or by any other method not involving raud or violence;

"(f) Assembling peaceably to act or to organize to act promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing ithout fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described section 3 of this Act.

"SEC. 5. No court of the United States shall have jurisction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons articipating or interested in a labor dispute constitute or re engaged in an unlawful combination or conspiracy beause of the doing in concert of the acts enumerated in ection 4 of this Act.

"SEC. 6. No officer or member of any association or organization, and no association or organization participating interested in a labor dispute, shall be held responsible or iable in any court of the United States for the unlawful ts of individual officers, members, or agents, except upon ear proof of actual participation in, or actual authorizaon of, such acts, or of ratification of such acts after actual owledge thereof.

"SEC. 7. No court of the United States shall have jurisction to issue a temporary or permanent injunction in y case involving or growing out of a labor dispute, as

herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a com-

inant shall also allege that, unless a temporary restrain-
order shall be issued without notice, a substantial and
eparable injury to complainant's property will be un-
oidable, such a temporary restraining order may be is-
ed upon testimony under oath, sufficient, if sustained, to
tify the court in issuing a temporary injunction upon
earing after notice. Such a temporary restraining order
all be effective for no longer than five days and shall be-
me void at the expiration of said five days. No temporary
training order or temporary injunction shall be issued
cept on condition that complainant shall first file an
dertaking with adequate security in an amount to be
ed by the court sufficient to recompense those enjoined
any loss, expense, or damage caused by the improvident
erroneous issuance of such order or injunction, including
reasonable costs (together with a reasonable attorney's
) and expense of defense against the order or against
granting of any injunctive relief sought in the same
oceeding and subsequently denied by the court.

'The undertaking herein mentioned shall be understood
signify an agreement entered into by the complainant
d the surety upon which a decree may be rendered in the
me suit or proceeding against said complainant and
rety, upon a hearing to assess damages of which hearing
mplainant and surety shall have reasonable notice, the
d complainant and surety submitting themselves to the
risdiction of the court for that purpose. But nothing
rein contained shall deprive any party having a claim or
use of action under or upon such undertaking from elect-
to pursue his ordinary remedy by suit at law or in
uity.

SEC. 8. No restraining order or injunctive relief shall
granted to any complainant who has failed to comply

with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

"SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

"SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character."

[Sections 11 & 12 have been repealed, c. 645, § 21, 62 Stat. 862 (1948)]

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether

or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

"SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

"SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."

3. **LMRA § 8(b)(4).**

Section 8(b)(4) of the National Labor Relations Act, as added by the Labor Management Relations Act, 61 Stat. 140 (1947), as amended, 29 U.S.C. § 158(b)(4), is as follows:

"SEC. 8

* * * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to

threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

"(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

"(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

"(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certifi-

cation of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;"

4. **Pertinent Provisions of the Interstate Commerce Act.**

Sections 1(4), 1(11), 1(15), 3(4), and 3(5) of the Interstate Commerce Act, 24 Stat. 379 (1887), as amended, 49 U.S.C. §§ 1(4), 1(11), 1(15), 3(4), and 3(5), are as follows:

"SEC. 1(4) It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reason-

able through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers."

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"SEC. 1(11) It shall be the duty of every carrier by railroad subject to this part to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful."

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"SEC. 1(15) Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Com-

mission may determine: (a) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; (c) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; and (d) to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them. In time of war or threatened war the President may certify to the Commission that it is essential to the national defense and security that certain traffic shall have preference or priority in transportation, and the Commission shall, under the power herein conferred, direct that such preference or priority be afforded."

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"SEC. 3(4) All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange

of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.

"SEC. 3(5) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other

carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the esult of compliance with such requirement, or just compensation for such use, or both, as the case may be."